

## WSR 10-19-018

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed September 8, 2010, 8:07 a.m., effective October 9, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state department of agriculture organic food program is adopting changes to chapter 16-160 WAC, Registration of brand name materials for organic food production. The program is clarifying application requirements and outlining inspection requirements and record-keeping requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-160-030, 16-160-035, 16-160-040, 16-160-050, 16-160-060, 16-160-070, 16-160-080, 16-160-090, 16-160-100 and 16-160-110; and amending WAC 16-160-010 and 16-160-020.

Statutory Authority for Adoption: RCW 15.86.060, 15.86.130.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-15-076 on July 19, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 2, Repealed 10.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 10, Amended 2, Repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 2, Repealed 10.

Date Adopted: September 8, 2010.

Dan Newhouse

Director

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

**WAC 16-160-010** ~~((What is the))~~ **Purpose of this** ~~((rule?))~~ **chapter.** This chapter specifies the ~~((review))~~ process ~~((and criteria))~~ for registering ~~((brand name))~~ materials ~~((used))~~ approved for use in organic ~~((food))~~ production, processing and handling on the department's brand name materials list. This chapter is promulgated pursuant to ~~((RCW 15.86.060 in which the director is authorized to adopt rules for the proper administration of chapter 15.86 RCW and RCW 15.86.070 in which the director is authorized to adopt rules governing the certification of producers of organic food))~~ chapter 109, Laws of 2010 to implement the brand name materials list.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

**WAC 16-160-020 Definitions.** As used in this chapter:

~~((1))~~ "Animal manure" means ~~((a material composed of excreta, with or without bedding materials and/or animal drugs and collected from poultry, ruminants or other animals except humans.~~

~~(2)~~ "Applicant" means the person who submits an application to register a material pursuant to the provisions of this chapter.

~~(3)~~ "Brand name material" means any material that is supplied, distributed or manufactured by a person.

~~(4))~~ feces, urine, other excrement, and bedding produced by livestock that has not been composted.

"Authorized representative" means either the registrant or a person authorized by the registrant to act on the registrant's behalf and bind the registrant for purposes of this chapter and registration on the brand materials list.

"Compost" means ((a material produced from a controlled process in which organic materials are digested aerobically or anaerobically by microbial action)) the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.

~~((5))~~ "Crop production aid" means any substance, material, structure, or device~~(;)~~ that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

~~((6))~~ "Department" means the department of agriculture of the state of Washington.

~~((7))~~ "Director" means the director of the department of agriculture or ~~((his or her duly authorized representative))~~ the director's designee.

~~((8)~~ "Distribute" means ~~to offer for sale, hold for sale, sell, barter, deliver, or supply materials in this state.~~

~~(9))~~ "Fertilizer" means ~~((any))~~ a single or blended substance containing one or more recognized plant nutrients which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

~~((10))~~ "Label" means ~~((the))~~ a display of written, printed, or graphic ((matter)) material on((; or attached to, the material or its)) the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

~~((11))~~ "Labeling" includes all written, printed, or graphic ~~((matter, upon or accompanying a material, or advertisement, brochures, posters, television, and radio announcements used in promoting the distribution or sale of the))~~ material accompanying an agricultural product at any time or written, printed, or graphical material about the agricultural product displayed at retail stores about the product.

~~((12))~~ "Livestock production aid" means any substance, material, structure, or device~~(;)~~ that is used to aid a producer in the production of livestock ~~((e.g.,))~~ such as parasiticides, medicines, feed additives~~(;)~~.

~~((13)) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing or handling.~~

~~((14)) "Manufacturer" means a person that compounds, produces, granulates, mixes, blends, repackages, or otherwise alters the composition of materials.~~

~~"Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling.~~

~~"National Organic Program" means the program administered by the United States Department of Agriculture pursuant to 7 C.F.R. Part 205, which implements the federal Organic Food Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).~~

~~"Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids as defined in chapter ((70.95)) 70.95J RCW.~~

~~((15)) "Person" means any ((individual, partnership, association, corporation, or organized group of persons whether or not incorporated)) natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.~~

~~((16)) "Pesticide" means, but is not limited to:~~

~~(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus ((-))<sub>2</sub> except virus on or in living man or other animal((+))<sub>2</sub> which is normally considered to be a pest or which the director may declare to be a pest;~~

~~(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and~~

~~(c) Any substance or mixture of substances intended to be used as a spray adjuvant((-) and~~

~~(d) Any other substances intended for such use as may be named by the director by regulation)).~~

~~((17)) "Post-harvest material" means any substance, material, structure, or device((-)) that is used in the post-harvest handling of agricultural products.~~

~~((18)) "Processing aid" means ((any material used in processing that does not become an ingredient in the food product (e.g., enzymes, boiler water additives, pressing aids, and filtering aids)) a substance that is added to a food:~~

~~(a) During processing, but is removed in some manner from the food before it is packaged in its finished form;~~

~~(b) During processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and~~

~~(c) For its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.~~

~~((19)) "Registered material" means any material that has applied for registration under this chapter, has met the criteria~~

~~for approval and has been issued written approval by the department.~~

~~((20)) "Registrant" means the person registering ((any)) a material ((pursuant to)) on the brand name materials list under the provisions of this chapter.~~

~~((21)) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.~~

~~((22)) "Spray adjuvant" means ((any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect, and which is in a package or container separate from that of the pesticide with which it is to be used)) any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide and that is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, wetting agents, spreading agents, deposit builders, adhesives, emulsifying agents, deflocculating agents, and water modifiers or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.~~

~~"USDA" means the United States Department of Agriculture.~~

#### NEW SECTION

**WAC 16-160-120 Applications.** (1) Registration of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the brand name materials list.

(2) Registration of a material on the brand name materials list under this chapter does not guarantee acceptance for use in organic production, processing, or handling by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material registered on the brand name materials list.

#### NEW SECTION

**WAC 16-160-130 General application requirements.** (1) Manufacturers of materials used in organic production, processing or handling may submit an application for registration on the brand name material list to the department.

(2) Manufacturers may submit applications to the department at:

Washington State Department of Agriculture  
Organic Food Program  
P.O. Box 42560  
Olympia, WA 98504-2560.

These forms may also be found on the department's web site at: <http://agr.wa.gov/foodanimal/organic>

(3) Applications for registration will not be approved unless the applicant demonstrates that the material meets the requirements and standards of the National Organic Program

and is approved for use in organic production, processing, or handling in accordance with the National Organic Program. Specifically, the material may not be a material prohibited for the use in the production or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.

(4) All registrations expire on October 31st of the registration year.

(5) Requests for expedited review must be submitted on a form provided by the department. If approved, expedited review is billed as provided under WAC 16-160-200.

#### NEW SECTION

##### **WAC 16-160-140 Initial application requirements.**

(1) Applications must be submitted on the form provided by the department, and must include:

(a) Material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC.

(b) The name and address of the registrant.

(c) Manufacturer information:

(i) Name and address of the manufacturer;

(ii) Contact information, including the name and phone number of the authorized representative of the registrant; and

(iii) List of all material manufactured at the same facility as the registered material.

(d) The brand name that the material is sold under.

(e) A copy of the label or bill of lading accompanying the material and a statement of all claims made for it, including directions and precautions for use.

(f) The complete formula or any alternate formulations for the material, including active and inert ingredients:

(i) Supplier of each ingredient;

(ii) Percentage of ingredient in the final formula; and

(iii) Purpose of each ingredient in the formula.

(g) Ingredient information for each ingredient listed in the formula (including alternate formulas) sufficient to demonstrate compliance with the standards of the National Organic Program:

(i) Manufacturing process; and

(ii) Formulation, including active and inert ingredients.

(h) A description of the manufacturing process for the material, including all substances used for the extraction and synthesis process, if appropriate. If the manufacturing facility manufactures materials other than the material listed in the application, the application must include a plan to prevent the contamination or commingling of materials allowed or prohibited in organic agriculture.

(i) A flow chart, indicating movement of material from incoming ingredient to outgoing final material. The flow chart may include, but is not limited to:

(i) Storage facilities;

(ii) Equipment location; and

(iii) Shipping facilities.

(j) The intended use of the material.

(k) The required fee for registration.

(l) Signature by authorized representative.

(m) The department may request additional information related to the items above as necessary to demonstrate that

the material meets the standards of the National Organic Program.

(2) Applications for fertilizers and pesticides must submit verification of a valid registration from the WSDA pesticide management division.

(3) In addition to the information required in this section, a registrant who is packaging or distributing a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

#### NEW SECTION

##### **WAC 16-160-150 Renewal application requirements.**

(1) Renewal applications must be submitted on the form provided by the department, and must include the following:

(a) Material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC;

(b) Name(s) of the material(s) seeking renewal;

(c) Name and address of the manufacturing facility(ies) for each registered material;

(d) Notification of changes to the original application;

(e) Signature of authorized representative; and

(f) The required fee for renewal. Renewal applications postmarked after October 31st must include the appropriate late fee as listed under WAC 16-160-200.

(2) Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

(3) Full disclosure of the complete formula of the material, including active and inert ingredients, is required every five years.

#### NEW SECTION

**WAC 16-160-160 Updating an application.** If any changes to the information provided in an initial or renewal application occurs at any time after the application is submitted, the registrant must immediately submit the corrected information to the department for review. This information includes, but is not limited to, changes in material formulation, ingredient suppliers, manufacturing facilities or processes, labels or other production or marketing processes. The corrected information must be provided in writing. Failure by the registrant to provide correction to the information provided in an application may result in suspension or revocation of the registration.

#### NEW SECTION

**WAC 16-160-170 Confidential information.** Any information provided to the department under this chapter that the registrant desires to claim as exempt from disclosure under the provisions of chapter 42.56 RCW, the Public

Records Act, or as a trade secret under chapter 19.108 RCW, the Uniform Trade Secrets Act, or other statute must be clearly designated as confidential. However, the determination of whether the information is exempt from disclosure will be based solely upon chapter 42.56 RCW or other applicable law.

NEW SECTION

**WAC 16-160-180 Inspections.** (1) By applying for registration on the brand name materials list, the registrant expressly grants to jurisdiction of the state of Washington in all matters related to the registration.

(2) By applying for registration on the brand name materials list, the registrant expressly grants the department or other organic certifying agent or inspection agent approved by the National Organic Program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

- (a) Inspect the portion of the premises where the materials, inputs or ingredients are stored, produced, manufactured, packaged or labeled;
- (b) Inspect records related to the sales, storage, production, manufacture, packaging or labeling of the material, inputs or ingredients; and
- (c) Obtain samples of materials, inputs or ingredients.

(3) Inspections may be conducted as a condition of ongoing compliance, after receiving an initial or a renewal application, notification of a change to an application, upon receipt of a complaint, or as required by the National Organic Program. Inspections may be announced or unannounced.

(4) Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections. The signed consent must be on a form provided by the department.

(5) Should the registrant or manufacturer refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled as provided under WAC 16-160-220. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records, fails to provide samples as provided in this section, or fails to provide the department with the consent described in subsection (4) of this section.

(6) Inspections must be documented on a form approved by the department. Inspections conducted by an inspection body other than the department will be accepted when a review determines that the inspection document is sufficient to demonstrate compliance with the standards of the National Organic Program.

NEW SECTION

**WAC 16-160-190 Recordkeeping requirements.** (1) Registrants must maintain records sufficient to verify that the materials are approved for use in organic production, pro-

cessing, or handling and comply with the standards of the National Organic Program. These records may include:

- (a) Records pertaining to incoming raw materials:
    - (i) Invoices/bills of lading;
    - (ii) Transportation documentation;
    - (iii) Material safety data sheets;
    - (iv) Storage documentation.
  - (b) Production records:
    - (i) Material formulations;
    - (ii) Dates of production;
    - (iii) Amount of ingredients used in each batch;
    - (iv) Amount of final materials;
    - (v) Sampling and/or laboratory analyses;
    - (vi) Lot identification and tracking;
    - (vii) Other records maintained during manufacturing.
  - (c) Finished material records:
    - (i) Packaging documentation;
    - (ii) Sales documentation;
      - Purchase orders;
      - Receipts;
      - Shipping documents;
    - (ii) Storage documentation.
- (2) Records shall be maintained for six years.

NEW SECTION

**WAC 16-160-200 Fees.** The following fees apply to applicants and registrants to the brand name materials list.

(1) **Initial material registration:**

(a) The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is five hundred dollars per material.

(b) The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is four hundred dollars per material.

(2) **Renewal registration:** The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is two hundred dollars per material.

(3) **Late fees:** Renewal applications postmarked after October 31st must include a late fee in addition to the renewal fee. Renewal applications received after February 2nd will not be accepted.

If your application is postmarked after October 31st but before:	Then the late fee is:
December 1	\$100
January 1	\$200
February 1	\$300

(4) **Inspections:** Inspections conducted by the department, including report writing, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management. Fees assessed for inspections conducted by third-party

inspection agencies are established by that agency. Registrants may contact the inspection agency to determine the applicable fee for those inspections.

(5) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department of agriculture or at the cost for analyses performed by another laboratory.

(6) **Expedited evaluation fees:** Requests for expedited reviews may be submitted and, if approved, are billed at the rate of forty dollars per hour.

#### NEW SECTION

**WAC 16-160-210 Labels and logos.** A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in this section in the labeling of the material. Registered materials are not certified as organic by the department and are prohibited from making claims indicating products are "certified organic" or similar term. Materials that are not registered under this chapter are prohibited from using the statement or the logo in this section in the labeling of the material. In addition to the other limitations expressed in this chapter and chapter 15.86 RCW, registration does not imply the Washington department of agriculture endorses the use of the product, does not make any guarantee that the material performs as represented by the registrant, and does not guarantee acceptance for use in organic production by certifying agents other than the department.



#### NEW SECTION

**WAC 16-160-220 Suspension, revocation, cancellation, and denial of registrations.** (1) Registrations on the brand name materials list, and applications for registration, are governed by chapter 34.05 RCW. The director may deny, suspend, cancel, or revoke a registration on the brand name materials list if the director determines that a registrant has

failed to meet the registration criteria established under chapter 15.86 RCW or chapter 16-160 WAC, or violated any other provision under chapter 15.86 RCW or chapter 16-160 WAC.

(2) Application or registrations will be revoked, canceled, or denied if a material fails to meet the standards for approval or is no longer approved for use in organic production, processing, or handling by the National Organic Program.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-160-030	Do I need to register my brand name material with the organic food program?
WAC 16-160-035	Brand name materials list.
WAC 16-160-040	How do I apply for registration?
WAC 16-160-050	When do registrations expire?
WAC 16-160-060	What criteria are used to determine if a brand name material is approved?
WAC 16-160-070	Application fees.
WAC 16-160-080	Inspections.
WAC 16-160-090	Denial or revocation of a registration.
WAC 16-160-100	Labeling of registered brand name materials and use of organic logo.
WAC 16-160-110	Organic material registration logo.

#### **WSR 10-19-023**

#### **PERMANENT RULES**

#### **OFFICE OF**

#### **INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2010-05—Filed September 9, 2010, 6:57 a.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule making permanently amends WAC 284-23-806(5) replacing the word "additional" with "alternative."

Citation of Existing Rules Affected by this Order: Amending WAC 284-23-806.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a).

Adopted under notice filed as WSR 10-14-109 on July 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 9, 2010.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending Matter No. R 2009-05, filed 6/2/10, effective 7/3/10)

**WAC 284-23-806 Required procedures and standards for sale of juvenile life insurance policies.** Beginning July 1, 2009, an insurer must comply with the following procedures and standards when underwriting juvenile life insurance policies:

(1) An insurer may refuse an applicant's request for life insurance when the combined life insurance-in-force exceeds the issuing insurer's maximum for juveniles.

(2) Life insurance upon a juvenile must not be made or take effect unless at the time the contract is made, the applicant is a person having an insurable interest in the life of the juvenile. The insurer must obtain and keep documentation sufficient to demonstrate that the applicant for the policy has an insurable interest in the life of the juvenile.

(3) In addition to the signature of the applicant, the consent of the parent or legal guardian with whom the juvenile resides, as evidenced by signature, must be obtained before submitting the application for underwriting. Any juvenile age fifteen or older must sign the application for insurance on the juvenile's life.

(4) An insurer must have underwriting standards and procedures justifying the issuance of a life insurance policy on the life of a juvenile. The insurer must provide the insurance commissioner with documentation from its records and files to support its underwriting justification upon request. The justification must address the following elements:

(a) The issued policy must conform to the insurer's established standards and practices for underwriting juvenile life insurance or explain any variance.

(b) As part of its underwriting practice, the insurer must identify the amount, if any, of other life insurance contracts on the life of the juvenile which are in force or applied for at the time of application.

(c) The insurer must confirm that the policy death benefit is grossly proportional to the value of life insurance or accidental death benefits issued for other siblings or immediate family members, and if not, justify why proportionality or equivalency was not required.

(d) The commissioner must be able to determine that the insurer had good cause to underwrite when the overall amount of insurance on the juvenile exceeds the annual household income, and if it does so, justify why such an amount was approved. The extent to which the beneficiary or applicant is dependent on the juvenile for income or other support is an example of such a justification.

(5) If an application on the life of a juvenile is fifty thousand dollars or less and issued without underwriting, the insurer must meet the following (~~additional~~) alternative requirements:

(a) In addition to asking the applicant, take reasonable steps to determine the total amount of insurance in-force on the life of the juvenile at the date of application including, but not limited to, checking any national data base for in-force insurance information;

(b) Document the steps taken to determine the total amount of insurance in-force on a particular application and make the documentation available to the insurance commissioner upon request; and

(c) File an amended application or endorsement for use in Washington including the following statement: "This policy may be void or reduced when a claim is submitted if the total amount of life insurance in-force from all sources exceeds the underwriting limits established for issuance of this policy on the life of a juvenile." This statement must be printed in bold face type of at least twelve-point font.

(6) For each application for juvenile life insurance rejected by an insurer, each insurer must maintain at its home or principal office a complete file containing the original signed application, underwriting analysis, correspondence with the applicant and any other documents pertinent to the decision to reject the applicant as an insured, for a period of not less than ten years from the date the application was signed by the applicant. Such file shall be subject to inspection by the insurance commissioner.

**WSR 10-19-025  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed September 9, 2010, 11:01 a.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Requirement per RCW 39.04.320 [(1)](c)(i) regarding apprenticeship utilization necessitate[s] making changes to WAC 392-344-095 and 392-344-165 in order to educate and verify that the districts have fulfilled the apprenticeship utilization requirements. The changes require the district to include language in the construction documents that the apprenticeship requirements must be followed. The other requirement will be a certification by the school district that the apprenticeship reporting requirements are met prior to receiving retainage from the state.

Citation of Existing Rules Affected by this Order: Amending WAC 392-344-095 and 392-344-165.

Statutory Authority for Adoption: RCW 28A.525.020 Duties of the superintendent of public instruction.

Adopted under notice filed as WSR 10-15-042 on July 13, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 25, 2010.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-095 Construction documents—Compliance with public works statutory provisions.** The construction documents shall provide for compliance by the contractor with pertinent statutory provisions relating to public works including the following:

- (1) Chapter 39.08 RCW relating to contractor's bond;
- (2) Chapter 39.12 RCW relating to prevailing wages;
- (3) Chapter 18.27 RCW relating to contractor registration;
- (4) Chapter 49.28 RCW relating to hours of labor;
- (5) Chapter 49.60 RCW relating to discrimination;
- ~~((and))~~ (6) Chapter 70.92 RCW relating to the provisions for the aged and physically handicapped;
- (7) RCW 39.04.320 relating to apprenticeship utilization.

AMENDATORY SECTION (Amending WSR 08-20-008, filed 9/18/08, effective 10/19/08)

**WAC 392-344-165 Documents required for release of retainage by school district.** Release of retainage on contracts shall be subject to receipt by the superintendent of public instruction of the following documents:

- (1) These documents shall be required no later than thirty days after official acceptance:
  - (a) Properly executed state invoice voucher as per the requirements of WAC 392-344-145;
  - (b) Architect/engineer certificate(s) of completion;
  - (c) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;
  - (d) School district board of directors' resolution accepting the building commissioning report;

(e) Certification by the authorized agent of the school district that the requirements of RCW 39.04.320 apprenticeship utilization have been met.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

**WSR 10-19-026  
PERMANENT RULES  
OLYMPIC COLLEGE**

[Filed September 9, 2010, 11:20 a.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the nondiscrimination policy is to clarify and publicize the nondiscrimination standards for Olympic College.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 10-14-059 on June 30, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 8, 2010.

Thomas Oliver  
Rules Coordinator

NEW SECTION

**WAC 132C-10-160 Nondiscrimination policy.** (1) Intent. The Olympic College board of trustees herein affirms its policy of equal opportunity to all individuals and all the communities we serve. Olympic College is committed to the principle of equal opportunity in all matters relating to

employment, college-sponsored activities, and education programs and will comply with all applicable laws prohibiting discrimination including Titles VII and IX of the Civil Rights Act of 1964, and amendments; the Age Discrimination in Employment Act of 1967; section 504 of the Rehabilitation Act of 1974; the Americans with Disabilities Act of 1990; and the Washington state laws against discrimination, chapter 49.60 RCW.

(2) Policy. Olympic College is committed to the principle of equal opportunity in education and employment. Harassment and/or discrimination directed toward any individual or group on the basis of race, creed, color, national origin, sex, honorably discharged veteran or military status, age, religious preference, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, status as a disabled or Vietnam-era veteran, or political opinions or affiliations, or any other population designated by statute is a violation of the mission and purpose of Olympic College and will not be tolerated. The college is committed to preventing and stopping discrimination, including harassment, on any of these unlawful bases, and any associated retaliatory behavior. All employees and students shall be allowed to work and learn in an environment free from discrimination.

(a) This policy is based on the principle that all forms of harassment and/or discrimination are unacceptable and will be dealt with promptly and effectively. Students, faculty or staff who are determined to have violated this policy (following investigatory proceedings) are subject to disciplinary action up to and including termination of employment and permanent dismissal (students).

(b) Applicants for admission or employment or any employees, students, or participants in college activities or programs who believe that they have been discriminated against may pursue an institutional complaint and/or may pursue other remedies provided by law.

(c) Administrators, supervisors and faculty members shall assist in ensuring that no retaliation occurs against persons who make complaints, persons who are complained against or persons who are involved in the investigation of complaints.

(3) Responsibility.

(a) The president of the college, and all administrative employees shall have ultimate responsibility for overseeing compliance with this policy at his or her respective unit of the college.

(b) In addition, each vice-president, executive officer, administrative officer, faculty member or other person with supervisory responsibility shall be required to report any complaint of discrimination, sexual harassment, or any harassment that violates this policy.

(c) All members of the college community are required to cooperate in any investigation of the discrimination/harassment complaint.

(4) Complaint procedure. Persons who believe that they have been the subject of unlawful discrimination or harassment are encouraged to bring such issues to the attention of their supervisor, instructor, or human resource services, or follow the established complaint procedures.

**WSR 10-19-028**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 9, 2010, 12:21 p.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rule revisions reduce the number of state-funded learning improvement days from one to zero for the 2010–11 school year, pursuant to section 503(7) of the 2010–11 State Operating Supplemental Appropriations Act, ESSB 6444. Furthermore, these revisions limit the state funding of learning improvement days to the number of days provided for in the State Biennial Operating Appropriations Act.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-956, 392-140-961, and 392-140-962.

Statutory Authority for Adoption: RCW 28A.150.290

(1).

Adopted under notice filed as WSR 10-15-040 on July 13, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 25, 2010.

Randy Dorn  
State Superintendent

AMENDATORY SECTION (Amending WSR 09-19-050, filed 9/11/09, effective 10/12/09)

**WAC 392-140-956 Learning improvement days—Other definitions.** As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district.



Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- 01 Basic Education
- 02 Basic Education-Alternative Learning Experience
- 21 Special Education-Supplemental-State
- 31 Vocational-Basic-State
- 34 Middle School Career and Technical Education-State
- 45 Skills Center-Basic-State
- 55 Learning Assistance Program-State
- 65 Transitional Bilingual-State
- 74 Highly Capable
- 97 District-wide Support

(5) "State institutional education programs" means the following programs:

- 26 Special Education-Institutions-State
- 56 State Institutions, Centers, and Homes-Delinquent
- 59 Institutions-Juveniles in Adult Jails

AMENDATORY SECTION (Amending WSR 09-19-050, filed 9/11/09, effective 10/12/09)

**WAC 392-140-961 Learning improvement days—Determination of the number of funded learning improvement days (~~in the 2001-02 school year and thereafter~~).** The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district (~~for the 2001-02 school year and~~) for each school year (~~thereafter~~) as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the selected state-funded programs.

(b) For each employee, subtract one hundred eighty days from the number of days reported in the base contract.

(c) ~~((i) For the 2001-02 school year, take the lesser of three days or the result of (b) of this subsection but not less than zero.~~

~~((ii) For the 2002-03 through 2008-09 school years, take the lesser of two days or the result of (b) of this subsection but not less than zero.~~

~~((iii) For the 2009-10 school year and thereafter, take the lesser of one day or the result of (b) of this subsection but not less than zero.)~~ For each school year, take the lesser of the number of learning improvement days funded in the state Biennial Operating Appropriations Act or the result of (b) of this subsection, but not less than zero.

(d) Sum the number of days determined for all employees pursuant to (b) and (c) of this subsection.

(e) Divide the result of (d) of this subsection by the number of employees and round to two decimal places.

(f) The result is the number of funded learning improvement days for the district.

(3) After the close of the school year, the superintendent shall fund the lesser of:

(a) The number of days determined pursuant to subsection (2) of this section; or

(b) The number of days reported by the district pursuant to WAC 392-140-967.

AMENDATORY SECTION (Amending WSR 09-19-050, filed 9/11/09, effective 10/12/09)

**WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days.** Using the number of learning improvement days determined pursuant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document 2, or successor salary allocation schedules, shall be reduced pro rata for any district with less than ~~((three learning improvement days in the 2001-02 school year, or less than two learning improvement days in the 2002-03 through 2008-09 school years, or less than one learning improvement day in the 2009-10 school year and thereafter in selected state-funded programs))~~ the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allocation per pupil for ~~((three))~~ learning improvement days ~~((in the 2001-02 school year, for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent))~~ shall be reduced pro rata for any district with ~~((fewer learning improvement days in selected state-funded programs))~~ less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(4) For state institutional education programs the salary allocation for ~~((three))~~ learning improvement days ~~((in the 2001-02 school year, for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent))~~ shall be reduced pro rata for any district with ~~((fewer learning improvement days in state institutional education programs))~~ less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961. Educational service districts or contractors operating state-funded institutional

education programs shall be eligible for learning improvement day funding in the same manner as school districts.

(5) Allocations for learning improvement days are subject to adjustment or recovery based on findings of the Washington state auditor and chapters 392-115 and 392-117 WAC.

**WSR 10-19-029**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 9, 2010, 12:22 p.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The definition of institution of higher education should be revised to include public tribal colleges, The Evergreen State College, and community colleges in Idaho and Oregon. The definition of institution of higher education should be revised to align with RCW 28A.600.300 and 28A.600.385.

Citation of Existing Rules Affected by this Order: Amending WAC 392-169-033.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 10-15-029 on July 13, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 25, 2010.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 95-02, filed 4/14/95, effective 5/15/95)

**WAC 392-169-033 Institution of higher education—**  
**Definition.** As used in this chapter, the term "institution of higher education" means:

(1) A Washington community college established under chapter 28B.50 RCW;

(2) A Washington technical college established under chapter 28B.50 RCW;

(3) Central Washington University, Eastern Washington University, ~~(and)~~ Washington State University, and The Evergreen State College if:

(a) The university has decided to participate in the running start program; and

(b) The board of directors of the school district through which an eligible student seeks to obtain running start program high school credit has decided to participate in the universities' running start program.

(4) A public tribal college located in Washington and accredited by the northwest commission on colleges and universities or another accrediting association recognized by the United States Department of Education pursuant to RCW 28A.600.300.

(5) Community colleges in Idaho or Oregon pursuant to RCW 28A.600.385.

**WSR 10-19-030**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 9, 2010, 12:31 p.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule revisions add the new federal stimulus revenue codes to the levy base.

For 6114 federal stimulus-IDEA one half the 2009-10 allocation is added to the levy base for the 2011 levy authority calculation, and one half added to the levy base for the 2012 calculation.

Rules defining the local effort assistance calculation are repealed. These rules repeat the process defined in chapter 28A.500 RCW, without adding to that process. Rather than revising these rules for changes made in the last legislative session, we are repealing the rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-139-600, 392-139-606, 392-139-610, 392-139-615, 392-139-620, 392-139-625 and 392-139-660; and amending WAC 392-139-007, 392-139-310, 392-139-320, and 392-139-670.

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

Adopted under notice filed as WSR 10-15-038 on July 13, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 25, 2010.

Randy Dorn  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 00-09-017, filed 4/11/00, effective 5/12/00)

**WAC 392-139-007 Organization of this chapter.** This chapter contains rules for excess levy authority and state matching money for excess levies also known as local effort assistance. The general organization of the chapter is as follows:

- Sections 001-099 General provisions and definitions.
- Sections 100-299 Definitions for excess levy authority.
- Sections 300-399 Determination of excess levy authority.
- ~~((Sections 600-649 Definitions for local effort assistance.))~~
- Sections ~~((660-679))~~ 665-676 Determination of local effort assistance.
- Sections 900-999 Notification, petitions and requests for review.

**AMENDATORY SECTION** (Amending WSR 08-20-054, filed 9/24/08, effective 10/25/08)

**WAC 392-139-310 Determination of excess levy base.** The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

- (a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;
- (b) The state and federal categorical allocations for the following:
  - (i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:
    - 4199 Transportation - operations;
    - 4399 Transportation - operations;
    - 4499 Transportation - depreciation;
    - 6199 Transportation - operations;
    - 6299 Transportation - operations; and
    - 6399 Transportation - operations.
  - (ii) Special education. Allocations for special education include allocations for the following accounts:
    - 4121 Special education;
    - 4321 Special education;
    - 6114 Federal Stimulus - IDEA;
    - 6124 Special education supplemental;
    - 6214 Federal Stimulus - IDEA;
    - 6224 Special education supplemental; ~~((and))~~
    - 6314 Federal Stimulus - IDEA; and
    - 6324 Special education supplemental.
  - (iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

- 3100 Barrier reduction;
- 4155 Learning assistance;
- 4165 Transitional bilingual;
- 4163 Promoting academic success;
- 4166 Student achievement;
- 4365 Transitional bilingual;
- 6111 Federal Stimulus - Title 1;
- 6151 Disadvantaged;
- 6153 Migrant;
- 6164 Limited English proficiency;
- 6211 Federal Stimulus - Title 1;
- 6251 Disadvantaged;
- 6253 Migrant;
- 6264 Limited English proficiency;
- 6267 Indian education - JOB;
- 6268 Indian education - ED;
- 6311 Federal Stimulus - Title 1;
- 6351 Disadvantaged;
- 6353 Migrant;
- 6364 Limited English proficiency;
- 6367 Indian education - JOM; and
- 6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

- 4198 School food services (state);
- 4398 School food services;
- 6198 School food services (federal);
- 6298 School food services;
- 6398 School food services; and
- 6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

- 310004 Full-day kindergarten;
- 4134 Middle school vocational;
- 4175 Professional development;
- 6113 Federal Stimulus - State Fiscal Stabilization Fund;
- 6176 Targeted assistance;
- 6213 Federal Stimulus - State Fiscal Stabilization Fund;
- 6276 Targeted assistance; ~~((and))~~
- 6313 Federal Stimulus - State Fiscal Stabilization Fund;

and

- 6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

- 5200 General purpose direct federal grants - unassigned;
- 6100 Special purpose - OSPI - unassigned;
- 6112 Federal Stimulus - School Improvement;
- 6118 Federal Stimulus - Competitive Grants;
- 6119 Federal Stimulus - Other;
- 6121 Special education - Medicaid reimbursement;
- 6138 Secondary vocational education;
- 6146 Skills center;
- 6152 School improvement;
- 6154 Reading first;
- 6162 Math and science - professional development;
- 6200 Direct special purpose grants;

6212 Federal Stimulus - School Improvement;  
6218 Federal Stimulus - Competitive Grants;  
6219 Federal Stimulus - Other;  
 6221 Special education - Medicaid reimbursement;  
 6238 Secondary vocational education;  
 6246 Skills center;  
 6252 School improvement;  
 6254 Reading first;  
 6262 Math and science - professional development;  
 6300 Federal grants through other agencies - unassigned;  
 6310 Medicaid administrative match;  
6312 Federal Stimulus - School Improvement;  
6318 Federal Stimulus - Competitive Grants;  
6319 Federal Stimulus - Other;  
 6321 Special education - Medicaid reimbursement;  
 6338 Secondary vocational education;  
 6346 Skills center;  
 6352 School improvement;  
 6354 Reading first; and  
 6362 Math and science - professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;  
 310004 Full-day kindergarten;  
 4121 Special education;  
 4134 Middle school vocational;  
 4155 Learning assistance;  
 4163 Promoting academic success;  
 4165 Transitional bilingual;  
 4166 Student achievement;  
 4174 Highly capable;  
 4175 Professional development;  
 4198 School food services (state);  
 4199 Transportation - operations;  
 4499 Transportation - depreciation;  
6111 Federal Stimulus - Title 1;  
6112 Federal Stimulus - School Improvement;  
6113 Federal Stimulus - State Fiscal Stabilization Fund;  
6114 Federal Stimulus - IDEA, one-half the August 2010 amount will be used in the 2011 calculation, and one-half in the 2012;

6118 Federal Stimulus - Competitive Grants;  
6119 Federal Stimulus - Other;  
 6121 Special education - Medicaid reimbursements;  
 6124 Special education - supplemental;  
 6138 Secondary vocational education;  
 6146 Skills center;  
 6151 Disadvantaged;

6152 School improvement;  
 6153 Migrant;  
 6154 Reading first;  
 6162 Math and science - professional development;  
 6164 Limited English proficiency;  
 6176 Targeted assistance;  
 6198 School food services (federal); and  
 6199 Transportation - operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

4321 Special education;  
 4365 Transitional bilingual;  
 4398 School food services;  
 4399 Transportation - operations;  
 5200 General purpose direct federal grants - unassigned;  
 6100 Special purpose - OSPI - unassigned;  
 6200 Direct special purpose grants;  
6211 Federal Stimulus - Title 1;  
6212 Federal Stimulus - School Improvement;  
6213 Federal Stimulus - State Fiscal Stabilization Fund;  
6214 Federal Stimulus - IDEA;  
6218 Federal Stimulus - Competitive Grants;  
6219 Federal Stimulus - Other;  
 6221 Special education - Medicaid reimbursement;  
 6224 Special education supplemental;  
 6238 Secondary vocational education;  
 6246 Skills center;  
 6251 Disadvantaged;  
 6252 School improvement;  
 6253 Migrant;  
 6254 Reading first;  
 6262 Math and science - professional development;  
 6264 Limited English proficiency;  
 6267 Indian education - JOM;  
 6268 Indian education - ED;  
 6276 Targeted assistance;  
 6298 School food services;  
 6299 Transportation - operations;  
 6300 Federal grants through other agencies - unassigned;  
 6310 Medicaid administrative match;  
6311 Federal Stimulus - Title 1;  
6312 Federal Stimulus - School Improvement;  
6313 Federal Stimulus - State Fiscal Stabilization Fund;  
6314 Federal Stimulus - IDEA;  
6318 Federal Stimulus - Competitive Grants;  
6319 Federal Stimulus - Other;  
 6321 Special education - Medicaid reimbursement;  
 6324 Special education supplemental;  
 6338 Secondary vocational education;  
 6346 Skills center;  
 6351 Disadvantaged;  
 6352 School improvement;  
 6353 Migrant;  
 6354 Reading first;  
 6362 Math and science - professional development;  
 6364 Limited English proficiency;

- 6367 Indian education - JOM;
- 6368 Indian education - ED;
- 6376 Targeted assistance;
- 6398 School food services;
- 6399 Transportation - operations; and
- 6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

(8) Funding which the district would have received calculated pursuant to RCW 84.52.0531 shall be included in the district's levy base.

AMENDATORY SECTION (Amending WSR 00-09-017, filed 4/11/00, effective 5/12/00)

**WAC 392-139-320 Determination of maximum excess levy percentage.** The superintendent of public instruction shall calculate each school district's maximum excess levy percentage ((~~as the greater of twenty-four percent or the percentage calculated as follows:~~

~~(1) Multiply the district's excess levy base determined pursuant to WAC 392-139-310 by the school district's maximum excess levy percentage for the prior calendar year;~~

~~(2) Subtract from the result of subsection (1) of this section the school district's levy reduction funds for the year of the levy; and~~

~~(3) Divide the result of subsection (2) of this section by the school district's excess levy base)) pursuant to RCW 84.52.0531.~~

AMENDATORY SECTION (Amending WSR 02-17-113, filed 8/21/02, effective 9/21/02)

**WAC 392-139-670 Local effort assistance allocations.** The superintendent of public instruction shall calculate each eligible school district's local effort assistance entitlement ((~~as the lesser of the amounts in subsections (1) and (2) of this section:~~

~~(1)(a) For the 2003 calendar year, the school district's certified excess levy for the calendar year as reported to the superintendent of public instruction pursuant to WAC 392-139-665 times the school district's state matching ratio for the~~

~~calendar year calculated pursuant to WAC 392-139-625 times 0.99;~~

~~(b) For the 2004 calendar year and thereafter, the school district's certified excess levy for the calendar year as reported to the superintendent of public instruction pursuant to WAC 392-139-665 times the school district's state matching ratio for the calendar year calculated pursuant to WAC 392-139-625;~~

~~(2) The school district's maximum local effort assistance calculated pursuant to WAC 392-139-660)) pursuant to chapter 28A.500 RCW.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-139-600	Definition—Adjusted assessed valuation.
WAC 392-139-606	Definition—District twelve percent levy amount.
WAC 392-139-610	Definition—District twelve percent levy rate.
WAC 392-139-615	Definition—Statewide average twelve percent levy rate.
WAC 392-139-620	Definition—Eligible school district.
WAC 392-139-625	Definition—State matching ratio.
WAC 392-139-660	Determination of maximum local effort assistance.

**WSR 10-19-034**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed September 9, 2010, 4:16 p.m., effective October 10, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the rule is to equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment follows the annual redistribution formula which is based on the number of tests done in the previous year. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck and ensure toxic shellfish do not reach consumers.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 10-13-176 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: A company name was corrected. There were no changes to the fee amounts.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 2, 2010.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 09-19-067, filed 9/14/09, effective 10/15/09)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category	Type of Operation	Number of Harvest Sites	Fee
	Harvester	≤ 2	\$173
	Harvester	3 or more	\$259
	Shellstock Shipper	≤ 2	\$195
	0 - 49 acres		
	Shellstock Shipper	3 or more	\$292
	0 - 49 acres		
	Shellstock Shipper	N/A	\$468
	50 or greater acres		
	Shucker-Packer	≤ 2	\$354
	(plants < 2000 ft <sup>2</sup> )		

Fee Category	Type of Operation	Number of Harvest Sites	Fee
	Shucker-Packer	3 or more	\$533
	(plants < 2000 ft <sup>2</sup> )		
	Shucker-Packer	≤ 2	\$429
	(plants 2000 - 5000 ft <sup>2</sup> )		
	Shucker-Packer	3 or more	\$644
	(plants 2000 - 5000 ft <sup>2</sup> )		
	Shucker-Packer	N/A	\$1,189
	(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1 of each year for companies licensed as harvesters; or

(iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
<u>Discovery Bay Shellfish</u>	\$464
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(10,452))</del> <u>8,507</u>
Jamestown S'Klallam Tribe	<del>\$(2,503))</del> <u>1,237</u>
Lower <del>((Elwha))</del> <u>Elwha</u> Klallam Tribe	<del>\$(2,208))</del> <u>4,485</u>
Lummi Nation	<del>\$(147))</del> <u>155</u>
Nisqually Indian Tribe	<del>\$(3,094))</del> <u>2,011</u>
Port Gamble S'Klallam Tribe	<del>\$(4,416))</del> <u>4,021</u>
Puyallup Tribe of Indians	<del>\$(8,244))</del> <u>8,971</u>
Skokomish Indian Tribe	<del>\$(1,619))</del> <u>155</u>
Squaxin Island Tribe	<del>\$(1,767))</del> <u>618</u>
Suquamish Tribe	<del>\$(21,198))</del> <u>21,189</u>
Swinomish Tribe	<del>\$(589))</del> <u>619</u>
Tulalip Tribe	<del>\$(1,619))</del> <u>5,568</u>
<del>((Washington Shell Fish, Inc.</del>	<del>\$147))</del>

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 10-19-044**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed September 13, 2010, 10:15 a.m., effective October 14, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: SHB 1414 (2009) expands the scope of practice for a health care assistant (HCA) to administer certain over-the-counter and prescription drugs. The amended rules add what drugs health care assistants can administer and the routes of administration. The rules also specify how a health care assistant may demonstrate initial and ongoing competency to administer specific drugs as determined by the health care practitioner.

Citation of Existing Rules Affected by this Order: Amending WAC 246-826-030, 246-826-100, 246-826-200, and 246-826-300.

Statutory Authority for Adoption: RCW 18.135.030 (SHB 1413, chapter 43, Laws of 2009).

Adopted under notice filed as WSR 10-10-051 on April 29, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-826-100 was revised to include a reference in the table to existing WAC 246-826-303, which states that injectable drugs may be administered by category G health care assistants. A sentence was also added to clarify that the supervisor is responsible for ensuring the HCA has proper education and training.

A final cost-benefit analysis is available by contacting Erin Obenland, Program Manager, Department of Health, Health Care Assistant Program, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4945, fax (360) 236-2901, e-mail erin.obenland@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: September 13, 2010.

Mary C. Selecky  
 Secretary

AMENDATORY SECTION (Amending WSR 09-02-081, filed 1/7/09, effective 2/7/09)

**WAC 246-826-030 Supervision of health care assistants.** A health care assistant may be supervised by either the delegator or by another practitioner who can order the act under his or her own license. The practitioner who is supervising the health care assistant must be physically present and immediately available in the facility during the administration of injections ~~((or)),~~ vaccines or drugs authorized in RCW 18.135.130. The supervising practitioner need not be present during procedures to withdraw blood.

AMENDATORY SECTION (Amending WSR 09-02-081, filed 1/7/09, effective 2/7/09)

**WAC 246-826-100 Health care assistant classification.** (1) There are seven categories of health care assistants. ((All categories may administer vaccines with appropriate delegation and supervision. This can be done by injection, orally, topically, or by nasal administration.

~~(1) Category A assistants may perform venous and capillary invasive procedures for blood withdrawal.~~

~~(2) Category B assistants may perform arterial invasive procedures for blood withdrawal.~~

~~(3) Category C assistants may perform intradermal, subcutaneous and intramuscular injections for diagnostic agents and administer skin tests.~~

~~(4) Category D assistants may perform intravenous injections for diagnostic agents.~~

~~(5) Category E assistants may perform intradermal, subcutaneous and intramuscular injections for therapeutic agents and administer skin tests.~~

~~(6) Category F assistants may perform intravenous injections for therapeutic agents.~~

~~(7) Category G assistants may perform hemodialysis.))~~

The table in this subsection outlines the tasks authorized for each category of health care assistant. The administration of drugs under RCW 18.135.130 expires on July 1, 2013.

<u>Categories</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>
<u>May perform:</u>	Venous and capillary invasive procedures for blood withdrawal	Arterial invasion procedures for blood withdrawal	Intradermal, subcutaneous and intramuscular injections for diagnostic agents and administer skin tests	Intravenous injections for diagnostic agents	Intradermal, subcutaneous and intramuscular injections for therapeutic agents and administer skin tests	Intravenous injections for therapeutic agents	Hemodialysis
<u>Injection</u>	Not authorized	Not authorized	V, I	I	V, I	I	***
<u>Oral</u>	V	V	D, V	V	D, V	V	V

<u>Categories</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>
May perform:	Venous and capillary invasive procedures for blood withdrawal	Arterial invasion procedures for blood withdrawal	Intradermal, subcutaneous and intramuscular injections for diagnostic agents and administer skin tests	Intravenous injections for diagnostic agents	Intradermal, subcutaneous and intramuscular injections for therapeutic agents and administer skin tests	Intravenous injections for therapeutic agents	Hemodialysis
Topical	D, V	D, V	D, V	D, V	D, V	D, V	D, V
Nasal	D, V	D, V	D, V	D, V	D, V	D, V	D, V
Rectal	D	D	D	D	D	D	D
Otic	D	D	D	D	D	D	D
Ophthalmic	D	D	D	D	D	D	D
Inhaled	D	D	D	D	D	D	D

D - Drugs administered under RCW 18.135.130.  
 I - Drugs by injection under WAC 246-826-200.  
 V - Vaccines administered under RCW 18.135.120.  
 \*\*\* - Drugs by injection listed under WAC 246-826-303 (2)(c).

(2) A written order from a supervising health care practitioner authorizing the administration of drugs listed in RCW 18.135.130 must be provided to the health care assistant.

(3) Health care assistants may perform supervised delegated functions as provided under WAC 246-826-020 and 246-826-030.

(4) Health care assistants must be able to demonstrate initial and ongoing competency to the supervisor or delegator on the administration of authorized drugs listed in RCW 18.135.130. Competency may be demonstrated by:

- (a) Practicing techniques in a simulated situation; or
- (b) Observing and performing procedures on patients until the health care assistant demonstrates proficiency to administer authorized drugs identified in the table in subsection (1) of this section; or

(c) Documenting all training on a checklist appropriate to the facility of the administration of drugs by the health care assistant. The health care assistant must complete and sign the form, have the form signed by the supervisor and the delegator, and have the form placed in their employee personnel file; or

(d) Other methods determined by the delegator.

(5) The supervisor or delegator is responsible for the patient's care. The tasks delegated to any category of health care assistant must be based on the health care assistant's individual education and training.

**AMENDATORY SECTION** (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-826-200 Hospital or nursing home drug injection.** (1) ((Class C, D, E, or F)) Health care assistants certified in categories C, D, E or F and working in a hospital or nursing home may administer by injection the ((following types of)) drugs ((by injection as)) listed in subsection (2) of this section if:

(a) Authorized and directed by a delegator; and ((as permitted by the category of certification of the health care assistant:))

(b) It is within their scope of practice as identified in the table of WAC 246-826-100.

(2) Drugs authorized to be administered by injection include:

- Antihistamines
- Antiinfective agents
- Antineoplastic agents
- Autonomic drugs
- Blood derivatives
- Blood formation and coagulation
- Cardiovascular drugs
- CNS agents
- Diagnostic agents
- Electrolytic, caloric and water balance
- Enzymes
- Gastrointestinal drugs
- Gold compounds
- Heavy metal antagonists
- Hormones/synthetic substitutes
- Local anesthetics
- Oxytocics
- Radioactive agents
- Serums toxoids, vaccines
- Skin and mucous membrane agents
- Smooth muscle relaxants
- Vitamins
- Unclassified therapeutic agents

((2)) (3) The schedule of drugs in subsection ((4)) (2) of this section shall not include the following unless the delegator is physically present in the immediate area where the drug is administered:

(a) Any controlled substances as defined in RCW 69.50.101 (1)(d)((:)); or

(b) Any experimental drug ((and)); or

(c) Any cancer chemotherapy agent ((unless a delegator is physically present in the immediate area where the drug is administered)).



AMENDATORY SECTION (Amending WSR 02-06-115, filed 3/6/02, effective 4/6/02)

**WAC 246-826-300 Definitions.** ~~((This section defines terms used in hemodialysis.~~

~~(4))~~ The definitions in this section apply throughout hemodialysis rules, WAC 246-826-301 through 246-826-303, unless the context clearly requires otherwise.

(1) "Competency" means the demonstration of knowledge in a specific area and the ability to perform specific skills and tasks in a safe, efficient manner.

(2) "Dialysis facility or center" means a place awarded conditional or unconditional status by the center for medic-aid/medicare services to provide dialysis services. This does not include in the home setting.

(3) "Direct supervision" means the licensed health care practitioner, as required by or authorized by RCW 18.135.-020, is physically present and accessible in the immediate patient care area and available to intervene, if necessary.

(4) "End-stage renal disease" (ESRD) means the stage of renal impairment that appears irreversible and permanent, and requires either the replacement of kidney functions through renal transplantation or the permanent assistance of those functions through dialysis.

(5) "Hemodialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

(6) "Hemodialysis technician" means a person certified as a health care assistant, Category G, by the department of health, who is authorized under chapter 18.135 RCW and these rules to assist with the direct care of patients undergoing hemodialysis and to perform certain invasive procedures under proper delegation and supervision by health care practitioners.

~~((2))~~ "Competency" means the demonstration of knowledge in a specific area and the ability to perform specific skills and tasks in a safe, efficient manner.

~~(3)~~ "Hemodialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

~~(4)~~ "Dialysis facility or center" means a place awarded conditional or unconditional status by the center for medic-aid/medicare services to provide dialysis services. This does not include in the home setting.

~~(5)~~ "Direct supervision" means the licensed health care practitioner, as required by or authorized by RCW 18.135.-020, is physically present and accessible in the immediate patient care area and available to intervene, when necessary.

~~(6))~~ (7) "Preceptor" means the licensed health care practitioner, as required by or authorized by RCW 18.135.020, who supervises, trains, and/or observes students providing direct patient care in a dialysis facility or center.

~~((7))~~ (8) "Training monitor" means the certified hemodialysis technician who with limited accountability mentors skill building and monitors for safety. The training monitor does not replace or substitute for the preceptor.

~~((8))~~ "End-stage renal disease" (ESRD) means the stage of renal impairment that appears irreversible and permanent, and requires either the replacement of kidney functions

~~through renal transplantation or the permanent assistance of those functions through dialysis.)~~

### WSR 10-19-045

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed September 13, 2010, 10:26 a.m., effective October 14, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to modify verbiage in current rule at the request of external stakeholder.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 10-16-101 on August 2, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 13, 2010.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-113, filed 9/22/09, effective 10/23/09)

**WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt.** (1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.070 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW 46.12.-070 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW 46.12.005;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or

when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

**(2) How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's on-line reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of ownership or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form (TD 420-074).

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of ownership or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.005 is also required.

**(3) What is the current market value threshold amount?** The current market value threshold amount is six thousand seven hundred ninety dollars.

**(4) How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW 46.12.005 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

**(5) What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW 46.12.005 has been met. The certificate of ownership will be branded according to WAC 308-56A-530.

**(6) What documentation is required to obtain a certificate of ownership after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of ownership:

(a) Application for certificate of ownership as described in RCW 46.12.030;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) ~~((are not required since liens are presumed to have been satisfied at the time of settlement of the claim))~~ or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

**(7) What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?**

Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

**(8) Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW 46.16.233, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

**(9) Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

**WSR 10-19-048**

**PERMANENT RULES**

**GAMBLING COMMISSION**

[Order 672—Filed September 13, 2010, 2:09 p.m., effective October 15, 2010]

Effective Date of Rule: October 15, 2010.

Purpose: This rule creates an eighteen month pilot program to test the regulatory and economic impacts of increasing the wager limits from \$40 to \$100 for Texas Hold'em poker. In addition, the pilot program would help to determine whether there is a demand for higher wagering limits for Texas Hold'em poker. At the end of the pilot program, the

commission will evaluate the data collected in the report and use it to determine whether the wager increase should be made permanent.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.-0282.

Adopted under notice filed as WSR 10-15-075 on July 19, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- The original version filed at the July 2010 commission meeting, required staff to report pilot program findings at the November 2012 commission meeting. Language was changed and staff will now provide a midprogram report at the July 2011 commission meeting and report final results of the pilot program along with recommendations at the May 2012 commission meeting.
- Language was added, that if approved by the commission, licensees in the program may continue to operate at the one hundred dollar wager limits until the commission finally approves or disapproves that wager limit, or until December 31, 2012, whichever comes first.
- Language was added requiring card rooms to notify staff when they plan to offer higher limit games.
- The original version filed at the July 2010 commission meeting, listed several of the items required on the tracking form. Three additional items that were on the tracking form have been added into the rule. Now all items on the tracking form will be codified in the rule, not just some of them.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: September 13, 2010.

Susan Arland  
Rules Coordinator

### Alternative #2

#### NEW SECTION

**WAC 230-15-189 House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker.** The commission finds it to be in the public's interest to conduct a pilot program to test the regulatory and economic impact of increasing wagering limits for the game of Texas Hold'em poker to one hundred dollars.

(1) The pilot program will commence October 15, 2010, and data collection will continue through March 31, 2012. House-banked or Class F card game licensees who wish to be included in the pilot program must submit a written request to participate to the director or his designee.

(2) Staff will provide a mid-program report at the July 2011 commission meeting, and report final results of the pilot program along with their recommendations at the May 2012 commission meeting. Licensees in the pilot program may continue to operate at the one hundred dollar wager limits until the commission finally approves or disapproves that wager limit, or until December 31, 2012, whichever comes first.

(3) House-banked or Class F card game licensees must notify us of when they plan to conduct higher limit games.

(4) House-banked or Class F card game licensees must document, retain and provide the following information to us monthly, and such further information we may request, in the format we prescribe during the pilot program:

(a) Dates, times, and number of tables operating under the pilot program; and

(b) Number of players at pilot program tables every hour the games are operated; and

(c) Wager limits offered at pilot program games; and

(d) Daily food and beverage sales; and

(e) The number of customers requesting to be self-barred; and

(f) All incidents of suspected cheating occurring at tables offering the higher wager limits.

(5) In the event a licensee fails to attempt to comply with the requirements of the pilot program, the director shall have the authority to remove that licensee from participation in the pilot program. Upon removal from the pilot program, the licensee will return to the wagering limits authorized in WAC 230-15-135. Removal from the pilot program shall not be subject to review or appeal.

### WSR 10-19-051

#### PERMANENT RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 10-242—Filed September 13, 2010, 5:21 p.m., effective October 14, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: SHB 2935 of 2010 eliminates the hydraulic appeals board and replaces it with the pollution control hearings board created in chapter 43.21B RCW. All formal appeals of hydraulic project approvals (HPA) decisions and orders imposing civil penalties formerly heard by the hydraulic appeals board or an administrative law judge through the office of administrative hearings will now be heard by the pollution control hearings board. SHB 2935 also allows appeals of issued, denied, conditioned, or modified HPAs, as well as orders imposing civil penalties for violations of chapter 77.55 RCW, to be informally made to the Washington department of fish and wildlife (WDFW). This proposal amends WDFW's HPA rules to be consistent with SHB 2935.

Also, technological advances enable appeal requests to be submitted in ways not currently allowed by rule. This proposal accommodates these additional methods of submitting appeal requests. The proposed rules also clarify various administrative procedures associated with appealing HPA decisions and orders imposing civil penalties.

Citation of Existing Rules Affected by this Order: Amending WAC 220-110-030, 220-110-340, and 220-110-350.

Statutory Authority for Adoption: RCW 77.12.047 and 77.55.021 as amended by SHB 2935.

Other Authority: SHB 2935.

Adopted under notice filed as WSR 10-13-179 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-110-340 and 220-110-350, made minor syntactical changes to increase reader comprehension. For example, changed "party" to "person," "parties" to "persons," "agency" to "department," "requests" to "request," and "person" to "appellant." In WAC 220-110-340(7), clarified the appeals process by using an active voice and explaining who does what.

A final cost-benefit analysis is available by contacting Lisa Wood, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2260, fax (360) 902-2946, e-mail lisa.wood@dfw.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 7, 2010.

Miranda Wecker, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 08-318, filed 12/29/08, effective 4/3/09)

**WAC 220-110-030 Hydraulic project approvals—Procedures.** (1) A person shall obtain an HPA before conducting a hydraulic project.

(2) Receipt by the department of any one of the following documents constitutes an application for a written HPA:

(a) A joint aquatic resources permit application (JARPA) submitted to the department;

(b) A forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010; or

(c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard.

(3) You shall request a written HPA by submitting a complete written application to the department. You shall request a pamphlet HPA by following the procedures in WAC 220-110-031. Your application for a written HPA shall contain general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the MHHW line in salt water, or waterward of the OHWL in fresh water, complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW. You and your authorized agent, if one is acting for you, must sign and date the application.

(4) The department shall grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department shall strive to issue HPAs in less than thirty days. The forty-five day requirement shall be suspended if:

(a) The site is physically inaccessible for inspection;

(b) You or your authorized agent, if one is acting for you, remains unavailable or unable to arrange for a timely field evaluation of the proposed project after ten working days of the department's receipt of the application;

(c) You or your authorized agent, if one is acting for you, requests a delay;

(d) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(e) The department is reviewing the application as part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(5) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(6) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property.

(7) The department may issue an expedited written HPA in those instances where normal processing would result in significant hardship for the applicant, or unacceptable environmental damage would occur.

(8) Expedited HPA requests require a complete written application and shall take precedence over other nonemergency applications. These will be issued within fifteen calendar days of receipt of a complete written application. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for expedited written HPAs.

(9) The county legislative authority or the department may declare an emergency or continue an existing declaration of an emergency where there is an immediate threat to life, the public, property, or of environmental degradation.

Upon the declaration of an emergency, the department shall grant verbal approval immediately upon request for a stream crossing, or work to remove any obstructions, repair existing obstructions, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. The verbal approval shall be obtained prior to commencing emergency work and the department must issue a written HPA reflecting the conditions of the verbal approval within thirty days. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for emergency HPAs.

(10) The department may accept written or verbal requests for time extensions, renewals, or alterations of an existing HPA. The request must be processed within forty-five calendar days of receipt of the request. Approvals of such requests shall be in writing. Transfer of an HPA to a new permittee requires written request by the original permittee or their authorized agent, if one is acting for the permittee, and such request shall include the HPA number. This written request shall be in a form acceptable to the department and shall include a statement that the new permittee agrees to be bound by the conditions in the HPA. The new permittee shall not conduct any project activities until the department has issued approval.

(11) Each HPA is usually specific to a watercourse, stating the exact location of the project site, and usually consists of general, technical, and special provisions.

(12) The written HPA, or clear reproduction, shall be on the project site when work is being conducted and shall be immediately available for inspection.

(13) The department may grant HPAs for a period of up to five years. Permittees shall demonstrate substantial progress on construction of that portion of the project relating to the HPA within two years of the date of issuance. The following types of HPAs issued under RCW 77.55.021 shall remain in effect without the need for periodic renewal, provided the permittee notifies the department before commencing work each year:

(a) Work of a seasonal nature that diverts water for irrigation or stock watering purposes; and

(b) Stream-bank stabilization projects if the problem causing the erosion occurs on an annual or more frequent basis as demonstrated by the applicant. Evidence of erosion may include, but is not limited to, history of permit application, approval, or photographs. Periodic floodwaters by themselves do not constitute a problem that requires an HPA.

(14) An HPA shall be denied when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. If approval is denied, the department shall provide the applicant, in writing, a statement of the specific reason(s) why and how the proposed project would adversely affect fish life.

(15) Protection of fish life shall be the only grounds upon which the department may deny or condition an HPA.

(16) The department may place specific time limitations on project activities in HPAs to protect fish life.

(17) HPAs do not exempt the applicant from obtaining other appropriate permits and following the rules or regulations of local, federal, and other Washington state agencies.

(18) The department shall administer this chapter in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11(~~(;)~~) and 220-100(~~(, and 232-19)~~) WAC.

(19) The department may, after consultation with the permittee, modify an HPA due to changed conditions. The modification becomes effective unless appealed (~~(to the department or the hydraulic appeals board)~~) as specified in RCW 77.55.021(4)(~~(, 77.55.301(5);)~~) and WAC 220-110-340 and 220-110-350.

AMENDATORY SECTION (Amending Order 08-318, filed 12/29/08, effective 4/3/09)

**WAC 220-110-340 Informal appeal of ~~((adverse))~~ administrative ~~((decisions))~~ actions.** ~~((It is recommended))~~ The department recommends that ~~((an))~~ a person aggrieved ~~((party))~~ by the issuance, denial, conditioning, or modification of an HPA contact the ~~((local habitat biologist))~~ department employee responsible for ~~((granting or denying))~~ making the decision on the HPA ~~((prior to))~~ before initiating an informal ~~((or formal))~~ appeal. Discussion of concerns with the ~~((habitat biologist))~~ department employee often results in a resolution of the problem without the need for an informal ~~((or formal))~~ appeal ~~((The habitat biologist may request review of your concerns by his or her supervisor))~~.

~~((All parties are encouraged))~~ The department encourages aggrieved persons to take advantage of the informal appeal process ~~((prior to))~~ before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal under WAC 220-110-350.

(1) ~~((The following procedures shall govern informal appeals of department actions taken under RCW 77.55.021, 77.55.141, 77.55.151, 77.55.161(2), 77.55.181, and 77.55.291.))~~ This rule does not apply to ~~((the department's decisions regarding whether hydraulic projects qualify for processing under RCW 77.55.181, governing certain fish habitat enhancement projects. This rule also does not apply to))~~ any provisions or conditions in pamphlet HPAs or supplemental approvals as defined in WAC 220-110-020 ~~((53)(e) and (96))~~. A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA. ~~((A person who is aggrieved or adversely affected by the following department actions may request an informal appeal:))~~

(2) Any person with standing may request an informal appeal of the following department actions:

(a) The issuance, denial, conditioning, or ~~((issuance of an HPA, or the conditions or provisions made part))~~ modification of an HPA; or

(b) An order imposing civil penalties.

~~((2))~~ (3) A request for an informal appeal shall be in writing and shall be received by the department within thirty days ~~((of the denial or issuance of an HPA or receipt of an order imposing civil penalties. The thirty-day time requirement may be stayed by the department if negotiations are occurring between the aggrieved party and the habitat biologist and/or their supervisor. Requests for informal appeal shall be mailed to HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, 600 Capitol Way, N.,~~

Olympia, Washington 98501-1091, or hand-delivered to 1111 Washington Street, S.E., Habitat Program, Fifth floor.

~~(3))~~ from the date of receipt of the decision or order.  
"Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The ~~((written request))~~ date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt; however, may not exceed forty-five days from the date of mailing.

(4) A request for ~~((an))~~ informal appeal shall be mailed to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, 600 Capitol Way N., Olympia, Washington 98501-1091; e-mailed to HPAapplications@dfw.wa.gov; faxed to 360-902-2946; or hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth floor.

(5) The request shall be plainly labeled as "Request for Informal Appeal" and shall ~~((contain))~~ include the following:

(a) The appellant's name, address, e-mail address (if available), and phone number ~~((of the person requesting the appeal));~~

(b) The specific ~~((agency))~~ department action that the ~~((person))~~ appellant contests ~~((, such as denial of an HPA, a particular condition in));~~

(c) The date the department issued, denied, conditioned, or modified an HPA, or ~~((an))~~ the date the department issued the order imposing civil penalties;

~~((e))~~ (d) The log number or a copy of the HPA, or a copy of the order imposing civil penalties;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the ~~((person))~~ appellant is the permittee, HPA applicant, landowner, resident, or ~~((other basis for the person's))~~ another person with an interest in the ~~((agency))~~ department action in question;

~~((d))~~ The date of denial, issuance, or condition of an HPA, or date the department issued the notice of civil penalty;

~~((e))~~ (h) The specific relief requested; ~~((and~~

~~((f))~~ (i) The attorney's name, address, e-mail address (if available), and phone number, if the ~~((person))~~ appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

~~((4))~~ (6) Upon receipt of a ~~((written))~~ valid request for an informal appeal, the department ~~((shall))~~ may initiate a review of the ~~((agency decision))~~ department action. If ~~((agreed to by))~~ the appellant agrees, and the appeal applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant ~~((and the area habitat biologist mediated by)),~~ the ~~((biologist's))~~ department employee responsible for the decision, and a supervisor. The time

period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(7) If a resolution is not reached through the informal conference process, the appellant is not the person who applied for the HPA, or the appeal involves an order imposing civil penalties, the HPA appeals coordinator or designee shall conduct an informal appeal hearing ~~((shall be conducted by the HPA appeals coordinator or designee)).~~ Upon completion of the informal appeal hearing, the HPA appeals coordinator ~~((;))~~ or designee shall recommend a decision to the director or ~~((the director's))~~ designee. ~~((This))~~ The director or designee shall approve or disapprove the recommended decision ~~((shall be approved or disapproved by the director or the director's designee))~~ within sixty days of the date the department received the request for informal appeal ~~((was received by the department)),~~ unless the appellant agrees to an extension of time ~~((is agreed to by the appellant)).~~ The department shall notify the appellant in writing of the decision of the director or ~~((the director's))~~ designee.

~~((5))~~ (8) If ~~((;))~~ the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following ~~((this))~~ completion of the informal appeal process, the appellant ~~((still wishes to contest the agency action,))~~ may initiate a formal appeal ~~((may be initiated))~~ under WAC 220-110-350. Formal review must be requested within the time periods specified in WAC 220-110-350.

AMENDATORY SECTION (Amending Order 08-318, filed 12/29/08, effective 4/3/09)

**WAC 220-110-350 Formal appeal of administrative ~~((decisions))~~ actions.** ~~((+))~~ The ~~((following procedures shall govern formal appeals of))~~ department ~~((actions taken under RCW 77.55.021, except as indicated in RCW 77.55.301(5)(a), 77.55.151, 77.55.161(2),))~~ recommends that a person aggrieved by the issuance, denial, conditioning, or ~~((77.55.291. Subsection (2) of this section addresses appeals))~~ modification of an HPA contact the department employee responsible for making the decision on the HPA before ~~((the hydraulic appeals board,))~~ initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for a formal appeal.

The department encourages aggrieved persons to take advantage of the informal appeal process under WAC 220-110-340 before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

(1) This rule does not apply to any provisions or conditions in ~~((pamphlets,))~~ pamphlet HPAs or supplemental approvals as defined in WAC 220-110-020 ~~((53)(e) and (96)).~~ A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA.

~~((a) A) (2) Any person ~~((who is aggrieved or adversely affected by))~~ with standing may request a formal appeal of the following department actions ~~((may request a formal appeal)):~~~~

~~((i))~~ (a) ~~The~~ ~~(denial or)~~ issuance ~~(of an HPA, or the conditions or provisions made part))~~, denial, conditioning, or modification of an HPA; or

~~((ii))~~ (b) ~~An order imposing civil penalties~~~~(; or~~

(iii) ~~Any other agency action by the department's habitat program for which an adjudicative proceeding is required under the Administrative Procedure Act, chapter 34.05 RCW).~~

~~((b))~~ (3) ~~As required by the Administrative Procedure Act, chapter 34.05 RCW, the department shall inform the HPA permittee~~~~(; HPA))~~ or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

~~((e))~~ (4) ~~A request for~~ ~~(an))~~ formal appeal shall be in writing and shall be ~~(received during office hours by))~~ filed with the clerk of the pollution control hearings board (PCHB) and served on the department within thirty days ~~(of the agency action that is being challenged. Requests for appeal))~~ from the date of receipt of the decision or order. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt; however, may not exceed forty-five days from the date of mailing.

(5) Service on the department shall be mailed to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, 600 Capitol Way N., Olympia, Washington 98501-1091~~(;);~~ e-mailed to HPAapplications@dfw.wa.gov; faxed to 360-902-2946; or hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth floor. (If there is no timely request for an appeal, the agency action shall be final and unappealable.

~~((d))~~ (6) ~~The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within thirty days~~ ~~((of))~~ from the date of receipt of the department's written decision in response to the informal appeal.

~~((e))~~ (7) ~~The~~ ~~(written))~~ request for ~~(an))~~ formal appeal ~~((shall be plainly labeled as "Request for Formal Appeal" and))~~ shall contain the ~~((following):~~

(i) ~~The name, address, e-mail address (if available) and phone number of the person requesting the appeal;~~

(ii) ~~The specific agency action that the person contests, such as denial of an HPA, a particular condition in an HPA, an order imposing civil penalties, etc.;~~

(iii) ~~Whether the person is the permittee, HPA applicant, landowner, resident, or other basis for the person's interest in the agency action in question;~~

(iv) ~~The date of denial, issuance, or condition of an HPA, if the person is contesting denial, issuance, or conditioning of an HPA;~~

(v) ~~Specific relief requested; and~~

(vi) ~~The attorney's name, address, e-mail address (if available) and phone number, if the person is represented by legal counsel.~~

~~(f) The appeal may be conducted by the director, the director's designee, or by an administrative law judge (ALJ) appointed by the office of administrative hearings. If conducted by an ALJ, the ALJ shall issue an initial order under RCW 34.05.461. The director or the director's designee shall review the initial order and enter a final order as provided by RCW 34.05.464.~~

~~(g) All hearings conducted by the director, the director's designee, or an ALJ under subsection (6) of this section, shall comply with the Administrative Procedure Act and the model rules of procedure, chapter 10-08 WAC.~~

(2) ~~The hydraulic appeals board hears appeals of the following permits:~~

(a) ~~Under RCW 77.55.021 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020;~~

(b) ~~Under RCW 77.55.241 for offsite mitigation proposals;~~

(c) ~~Under RCW 77.55.141 for single family marine bulkheads or rockwalls;~~

(d) ~~Under RCW 77.55.181 for fish habitat enhancement project HPA conditions or denials.~~

~~The appeal procedures for the board are found in WAC 259-04-060 and chapter 371-08 WAC))~~ information required by WAC 371-08-340.

(8) The department in its discretion may stay the effectiveness of any decision or order that has been appealed to the PCHB. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal to the PCHB, the appellant may apply to the PCHB for a stay of the decision or order, or removal of a stay imposed by the department.

(9) If there is no timely request for an appeal, the department action shall be final and unappealable.

## WSR 10-19-052

### PERMANENT RULES

### GAMBLING COMMISSION

[Order 673—Filed September 14, 2010, 8:02 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: Casey's Deadgame Service's request that the billing threshold be increased from \$25,000 to \$30,000 for punch board/pull-tab (PB/PT) service businesses was approved. This allows PB/PT service businesses to increase their yearly income \$5,000 a year without upgrading to a service supplier license. This could potentially save these small businesses more than \$600 a year in licensing fees.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-020 and 230-03-210.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 10-15-026 on July 13, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 13, 2010.

Susan Arland  
Rules Coordinator

**AMENDATORY SECTION** (Amending Order 457, filed 3/22/06, effective 1/1/08)

**WAC 230-03-020 Punch board and pull-tab service business permit.** (1) You must apply for a punch board and pull-tab service business permit if you:

(a) Reconcile sales, prizes, and cash on hand for punch board and pull-tab series; or

(b) Complete records we require; or

(c) Store punch boards and pull-tab series removed from play.

(2) The owners or employees of the punch boards and pull-tab service business must not be employees of the operator.

(3) The owners or employees of the punch boards and pull-tab service business must not provide management advice to the operator.

(4) The punch board and pull-tab service business must apply for a gambling service supplier license if combined gross billings exceed ~~((twenty-five))~~ thirty thousand dollars during the permit period.

**AMENDATORY SECTION** (Amending Order 617, filed 10/22/07, effective 1/1/08)

**WAC 230-03-210 Applying for a gambling service supplier license.** (1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

(a) Consulting or advisory services regarding gambling activities; or

(b) Gambling management services; or

(c) Financing for more than one licensee for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations:

(i) Once you have financed more than one licensee, you must be a licensed gambling service supplier until all loans with licensees or previous licensees are paid.

(ii) Once you have been a licensed gambling service supplier, you must be licensed as a gambling service supplier again before financing purchases or leases for any licensee; or

(d) Acting as a lending agent, or loan servicer, or placement agent; or

(e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer; or

(f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or

(g) Training individuals to conduct authorized gambling activities; or

(h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or

(i) Performing the testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compact; or

(j) Providing nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services exceed thirty thousand dollars during any permit period or license year.

(2) You do not need a gambling service supplier license if you are:

(a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or

(b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or

(c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or

(d) A person who only provides nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services do not exceed ~~((twenty-five))~~ thirty thousand dollars during any ~~((calendar year))~~ permit period; or

(e) A person who provides names, images, artwork or associated copyrights, or trademarks, or patent use, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or

(f) Regulated lending institutions.

**WSR 10-19-057**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Medicaid Purchasing Administration)

[Filed September 14, 2010, 2:07 p.m., effective October 15, 2010]

Effective Date of Rule: Thirty-one days after filing.



Purpose: Correcting old terminology such as "medical assistance administration (MAA)" to "the department," "internal control number" to "a transaction control number," "medical identification card" to "services card," "foster care placement" to "in out-of-home placement," fixing errant WAC cross references, adding updated web site links, and removing erroneous addresses.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0135, 388-501-0200, 388-502-0100, 388-502-0120, 388-502-0150, 388-502-0160, 388-502-0210, 388-502-0220, 388-531-0050, 388-531-0150, 388-531-0200, 388-531-0300, 388-531-0350, 388-531-0450, 388-531-0500, 388-531-0550, 388-531-0600, 388-531-0650, 388-531-0700, 388-531-0750, 388-531-0800, 388-531-0850, 388-531-0900, 388-531-0950, 388-531-1050, 388-531-1100, 388-531-1150, 388-531-1200, 388-531-1250, 388-531-1300, 388-531-1350, 388-531-1450, 388-531-1500, 388-531-1650, 388-531-1700, 388-531-1750, 388-531-1850, 388-531-1900, 388-532-730, 388-532-760, 388-534-0200, 388-539-0200, 388-539-0300, 388-539-0350, 388-551-1350, 388-553-100, 388-553-300, 388-553-400, and 388-556-0200.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 10-13-163 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-551-1550 was removed from this filing. WAC 388-534-0200, the department removed all proposed changes of "EPSDT screens" to "EPSDT exams." The language will remain unchanged as "EPSDT screens."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 49, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 49, Repealed 0.

Date Adopted: September 10, 2010.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-21 issue of the Register.

## WSR 10-19-062

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed September 14, 2010, 4:03 p.m., effective October 15, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to comply with SSB 6346 passed during the 2010 legislative session.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-099 Use class descriptions.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 10-16-102 on August 2, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: September 14, 2010.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-091, filed 11/6/07, effective 12/7/07)

#### **WAC 308-96A-099 Use class descriptions. (1) Why does the department assign use classes to vehicles?**

The department assigns use classes to:

- (a) Charge the proper license fees and taxes for vehicles;
- (b) Assign special brands on subsequent owner's certificate of ownership;
- (c) Apply certain restrictions on the use of the vehicles, which prints on the vehicle registrations;
- (d) Assign the proper license plates, tabs or decals.

#### **(2) Under what authority does the department assign use classes to vehicles?**

The department assigns use classes under the authority of RCW 46.16.040.

#### **(3) What use classes does the department assign and when do they apply?**

The use classes the department assigns are described below:

ABBREVIATION	TRANSLATION	DESCRIPTION
CAB	TAXI CAB	Motor vehicle used for carrying passengers between two points for compensation for an on-demand trip rather than a scheduled route. A vehicle with this use class may not carry any luggage or commodities that do not belong to a passenger being carried at the same time. In other words, the vehicle cannot just carry cargo between two points.
C/G	CONVERTER GEAR	Vehicle is an axle that is used to convert a semi-trailer to a full trailer. Converter gear is titled but not licensed.
CMB	COMBINATION	Vehicle is either (1) a power unit with a declared gross weight of 42,000 pounds or more and tows a trailer; or (2) a trailing unit with permanent plates. The trailer may be towed only by a power unit with a CMB, or FCB use class.
CMP	CAMPER	Is a slide-in pickup camper (not a canopy) as defined in RCW 46.04.085. Even if the owner has chosen to permanently attach the camper to the pickup, the units need to be titled and licensed separately.
COM	COMMERCIAL	Motor vehicle either (1) a power unit that does <b>not</b> pull a trailer or that pulls a trailer but the declared gross weight for the truck and trailer does not exceed 40,000 pounds; or (2) a trailing unit that is titled in a business name (including the name of a farm). A commercial trailer may be towed by a vehicle with PAS, TRK, COM, CMB, FAR or FCB use classes. If the trailer is being towed by a vehicle with FAR or FCB use class, the use of the trailer (items carried, etc.) must meet the farm use class requirements.
CYC	MOTORCYCLE	Is a motorcycle, motor driven cycle or scooter. A moped does not qualify to be licensed as a motorcycle as defined in RCW 46.04.330 and 46.04.332.
EX	EXEMPT	Can be any type of vehicle, which is owned by a city, county or state government agency or federally recognized Indian tribe located in the state of Washington. This includes school buses, which are owned or leased by school districts. If the school district contracts a company to provide total bus service, such as the bus, the driver and the maintenance, and the vehicle is registered in the name of the school district as registered owner, the vehicle qualifies for exempt license plates.
FAR	FARM	Motor vehicle is a truck (or tractor) used to transport the farmer's own farm, orchard or dairy products as defined in RCW 46.16.090, or aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse. The vehicle may also be used to transport the farmer's own farm supplies.
FCB	FARM COMBINATION	Motor vehicle is (1) a power unit (not a trailer) with a declared gross weight of 42,000 pounds or more and towing a trailer; and (2) meets the criteria of FAR use class above.
FED	FEDERAL	Vehicle is owned by the federal government of the United States. Like exempt vehicles, this could be any type of vehicle. This does not include vehicles displaying license plates issued by the federal government.
FEX	FARM EXEMPT	Any motor vehicle used exclusively in agricultural pursuits on farms as defined in RCW 46.16.010(3) and 46.04.181.

ABBREVIATION	TRANSLATION	DESCRIPTION
FIX	FIXED LOAD	Motor vehicle as defined in RCW 46.16.070(1). These vehicles have a unique use class because they are exempt from the law requiring vehicles with a scale weight of more than six thousand pounds to have a declared gross weight of at least 150 percent of the scale weight. The basic license fee is based on the declared gross weight for these vehicles and should be equal to the scale weight, or the next higher gross weight increment. If the scale weight exceeds the maximum legal limit for that vehicle, the declared gross weight needs to be equal to or just lower than the legal limit. Fixed load vehicles' maximum legal limit may actually be less than their scale weight. An oversize permit is required in addition to the registration in these cases.
F/H	FOR HIRE	Motor vehicle is used to transport people and/or commodities for compensation as defined in RCW 46.72.010. A for hire permit from business and professions division (BPD) is required.
H/C	HORSELESS CARRIAGE	Motor vehicle 40 years old or older <u>licensed</u> with <del>((limited use))</del> <u>restricted use</u> as defined in RCW 46.16.307.
H/D	HOUSE DOLLY	Vehicle constructed and used exclusively to move buildings or homes.
LOG	LOGGING	Vehicle is a truck or trailer used exclusively for hauling logs.
<u>MEP</u>	<u>MEDIUM SPEED ELECTRIC PASSENGER VEHICLE</u>	<u>Medium speed electric vehicle as defined in RCW 46.04.295.</u>
<u>MET</u>	<u>MEDIUM SPEED ELECTRIC TRUCK-TYPE VEHICLE</u>	<u>Medium speed electric vehicle as defined in RCW 46.04.295 and 46.04.653. These vehicles are equipped with a truck-type bed.</u>
MH	MOTOR HOME	Motorized vehicle designed for human habitation and defined in RCW 46.04.305
MOB	MOBILE HOME	<del>((Vehicle is)) A mobile or manufactured home as defined in RCW 46.04.302((- Mobile homes are)) is titled but generally not registered ((because of their size. Manufactured homes are taxed by the county, either as personal property or real property. Mobile home)). This use class does not include park model trailers.</del>
<u>NEP</u>	<u>NEIGHBORHOOD ELECTRIC PASSENGER VEHICLE</u>	<u>Neighborhood electric vehicle as defined in RCW 46.04.357.</u>
<u>NET</u>	<u>NEIGHBORHOOD ELECTRIC TRUCK-TYPE VEHICLE</u>	<u>Neighborhood electric vehicle as defined in RCW 46.04.357 and 46.04.653. These vehicles are equipped with a truck-type bed.</u>
ORV	OFF-ROAD VEHICLE	Vehicle is used off-road <u>as defined in RCW 46.09.020</u> . A vehicle licensed only as an ORV may not be operated on public roadways, including ocean beaches, <u>unless authorized under RCW 46.09.180</u> .
PAS	PASSENGER	Motor vehicle used to transport passengers as defined in RCW 46.04.382. Typically passenger cars, utility or multipurpose vehicles, passenger vans, and private buses are licensed as passenger vehicles.
PED	MOPED	Motor vehicle as defined in RCW 46.04.304 and subject to the restrictions in RCW 46.61.710.
RES	RESTORED	Motor vehicles over 30 years old <u>licensed</u> with <del>((limited))</del> <u>restricted</u> use as defined in RCW 46.16.307. Vehicles with this use class may display license plates described in WAC 308-96A-074.
SCH	SCHOOL	Motor vehicle owned and operated by a private school meeting the accreditation requirements of RCW 28A.195.010. The vehicle is used to transport children to and from school or in connection with school activities.
SNO	SNOWMOBILE	Vehicle is a snowmobile as defined in RCW <del>((46.10.020))</del> <u>46.10.010(2)</u> .

ABBREVIATION	TRANSLATION	DESCRIPTION
SNX	EXEMPT SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.010(2) and owned by a city, county or state agency.
STA	STAGE	Motor vehicle used as an auto stage as defined in RCW 46.04.050.
TLR	TRAILER	Vehicle is a personal use trailer as defined in RCW 46.04.620. Trailers used by businesses or others for commercial purposes do not qualify for this use class.
TOW	TOW	Motor vehicle as defined in RCW 46.16.079 and 46.55.010(8). If the vehicle carries other vehicles, it does not qualify for the TOW use class and must be licensed as COM.
TRK	TRUCK	Motor vehicle is a personal use truck, with a declared gross weight of twelve thousand pounds or less. Trucks used for business or commercial purposes do not qualify for the TRK use class.
TVL	TRAVEL TRAILER	Vehicle is a travel trailer as defined in RCW 46.04.623, which includes park models and camp/tent trailers.

**(4) Do all powered three-wheeled vehicles need to be licensed as motorcycles?**

~~(No. If the vehicle qualifies)~~ Yes, a three-wheeled vehicle needs to be licensed as a motorcycle for street use as defined in RCW 46.04.330 or 46.04.332 ~~(, it will be licensed as a motoreycle for street use. However, if the vehicle has a bench seat and a steering wheel as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a passenger vehicle or truck).~~

**(5) What license plates and use class will be assigned to my for hire vehicle?**

The license plates and use class assigned to your for hire vehicle depends upon how you use your vehicle. All for hire vehicles transport passengers and commodities for compensation. For hire vehicles include cabulances, limousines, taxi cabs, and buses hauling passengers for compensation in addition to transporting school children. There are two use classes and license plate combinations assigned to for hire vehicles:

(a) CAB use class vehicles are assigned passenger license plates. These vehicles are used exclusively for transporting passengers and their possessions; and

(b) F/H use class vehicles are assigned truck license plates. These vehicles not only transport passengers for compensation, but also transport commodities, without passengers, for compensation.

**(6) When may truck license plates be assigned to my passenger vehicle?**

Truck license plates may be assigned to your passenger vehicle whenever the vehicle is used to transport commodities, produce, freight or animals for commercial purposes. The use class would be COM instead of PAS. This would require a title application, a scale weight slip and a certified/notarized statement of use describing how the vehicle will be used commercially.

**(7) What use classes and license plates will be assigned to school buses?**

(a) EX use class and county exempt license plates will be assigned to a school bus owned or leased by an exempt agency (school district);

(b) SCH use class and passenger license plates will be assigned to a school bus owned or leased by an accredited private school;

(c) F/H use class and truck license plates will be assigned to school buses used for transporting passengers for compensation and not used exclusively for transporting school children to and from school or school related activities;

(d) (PAS) passenger; or

(e) (COM) commercial.

**(8) May I license my motorcycle or any other motor vehicle for both road and off road use?**

Yes, you may license your motorcycle or any other motor vehicle for both uses as long as the vehicle qualifies for road use. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

**(9) May I license my truck, truck tractor or tractor as a motor home?**

Yes, you may license your truck, truck tractor or tractor as a motor home if:

(a) The vehicle has been permanently altered to meet(s) the definition of a motor home in RCW 46.04.305; and

(b) You certify the vehicle qualifies as M/H and will be used exclusively as a motor home for personal use and not for commercial use.

**(10) Is my truck, truck tractor or tractor which I use exclusively for towing my travel trailer licensed differently than any other like truck?**

No. Your truck, truck tractor or tractor used exclusively for towing your travel trailer must be licensed in accordance with RCW 46.16.070. Depending on scale weight the use class will be TRK or COM.

NEW SECTION

**WAC 308-96A-139 Neighborhood and medium speed electric vehicles—Requirements. (1) Do I have to license my neighborhood or medium speed electric vehicle to drive on the road?**

Yes, you must license your vehicle to obtain a registration certificate. The registration certificate will indicate that your vehicle is a neighborhood or medium speed electric vehicle.

**(2) What fees will I pay to license my neighborhood or medium speed electric vehicle?**

You are required to pay all licensing fees for a passenger motor vehicle or truck (if equipped with a bed).

**(3) Do I have to complete a form to license my motor vehicle?**

Yes, in addition to all other forms required by law or rule, you must complete the Neighborhood/Medium Speed Electric Vehicle Certification form.

**(4) If I use my vehicle for commercial purposes, is it licensed differently?**

No. Your license will appear the same; however, if you wish to park in loading zones, you must license your motor vehicle with truck plates.

**(5) Are there restrictions on where a neighborhood or medium speed electric vehicle can be driven?**

Yes. The restrictions can be found in RCW 46.61.723 and 46.61.725.

**(6) How do I prove that my motor vehicle qualifies as a neighborhood or medium speed electric vehicle?**

New vehicles must have a statement on the manufacturer's statement of origin that indicates the motor vehicle conforms to federal regulations under Title 49 C.F.R. Part 571.500. If it is a used vehicle and the ownership document does not indicate it, the owner can complete the Neighborhood/Medium Speed Electric Vehicle Certification form as proof.

**WSR 10-19-065****PERMANENT RULES****LIQUOR CONTROL BOARD**

[Filed September 15, 2010, 11:54 a.m., effective October 16, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The existing rules included language that is no longer relevant and needed to be revised to clarify the process for local governments to petition the board for creation of an alcohol impact area.

Citation of Existing Rules Affected by this Order: Amending WAC 314-12-210 and 314-12-215.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 10-16-153 on August 4, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 15, 2010.

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 99-13-042, filed 6/8/99, effective 7/9/99)

**WAC 314-12-210 Chronic public inebriation ~~((CPI))~~ and alcohol impact areas ~~((AIA) Definitions)~~—Purpose.** (1) **What is the purpose of ~~((these))~~ the rules concerning chronic public inebriation and alcohol impact areas?**

(a) The enabling statutes for the ~~((liquor control))~~ board are contained in chapter 66.08 RCW. These statutes authorize the board to exercise the police powers of the state for the protection of the welfare, health, peace, and safety of the people of Washington.

(b) The board's mandate to protect the welfare, health, peace, and safety of the people is to ensure that a liquor licensee~~(s)~~ conducts ~~((their))~~ his or her business in a lawful manner and that the presence of a licensee's ~~((alcohol))~~ liquor sales does not unreasonably disturb the welfare, health, peace~~(;)~~ or safety of the surrounding community.

(c) The purpose of ~~((these))~~ the rules concerning chronic public inebriation and alcohol impact areas is to establish a framework under which the board, in partnership with local government and community organizations, ~~((can))~~ may act to mitigate negative impacts on a community's welfare, health, peace~~(;)~~ or safety that result from the presence of chronic public inebriation.

(d) For the purpose of these rules, chronic public inebriation exists when the effects of the public consumption of ~~((alcohol and))~~ liquor or public intoxication occur in concentrations that endanger the welfare, health, peace~~(;)~~ or safety of a neighborhood or community.

**(2) What do ~~((these))~~ the rules concerning chronic public inebriation and alcohol impact areas seek to do?** WAC 314-12-210 and 314-12-215 seek to:

(a) Establish an expanded local review process for liquor license applications, ~~((assumptions\*, and renewals inside))~~ license assumptions, and renewals of active liquor licenses for businesses located within a recognized alcohol impact area ~~((AIA))~~;

(b) ~~((Create))~~ Establish standards under which the board may refuse to issue a liquor license; may refuse to permit ~~((the))~~ a license assumption or renewal of a liquor license; may place conditions or restrictions upon the issuance, assumption~~(;)~~ or renewal of a license; or may place conditions or restrictions on an existing license ~~((inside a recognized AIA))~~ located within the geographical boundaries of a recognized alcohol impact area; and

(c) Allow the board~~(;)~~ in specific circumstances~~(;)~~ to restrict the off-premises sale of certain ~~((alcohol))~~ liquor products or ~~((alcohol))~~ liquor product containers inside a recognized ~~((AIA))~~ alcohol impact area.

(\*Note: A liquor license assumption refers to an application by a prospective new owner/operator for an existing licensed business. Under certain conditions, such applicants may apply for a temporary license to continue operations during the new license application review period.)

AMENDATORY SECTION (Amending WSR 99-13-042, filed 6/8/99, effective 7/9/99)

**WAC 314-12-215 Alcohol impact areas—Definition—Guidelines.** (1) **What is an alcohol impact area ((AIA)), and how is it different?**

(a) An alcohol impact area is a geographic area located within a city, town(;) or county, and that is adversely affected by chronic public inebriation or illegal activity associated with ((alcohol)) liquor sales or consumption. ((The area must be designated by ordinance by the government subdivision and recognized by resolution of the board before any enhanced processes described by these rules are applied.))

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) ~~((What guidelines will the board use to recognize an alcohol impact area (AIA)?~~ The board, by resolution, may recognize an AIA adopted by a city, town, or county and subsequently referred to the board by that government subdivision. To achieve recognition, the AIA must meet all of the following conditions:

(a) The AIA comprises a geographic area that does not include the entire territory of the local jurisdiction;

(b) The government subdivision has given a rationale, expressed in the ordinance, for the establishment of the proposed boundaries of the AIA;

(c) The government subdivision has described the boundaries of the AIA in the ordinance)) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve recognition.

(a) The geographic area of an alcohol impact area must not include the entire territory of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) Local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

~~((The AIA ordinance includes findings of fact which establish:))~~ (c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with ((alcohol)) liquor sales

~~((and/or))~~ or consumption within ~~((the))~~ a proposed ~~((AIA is contributing))~~ alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within ~~((the))~~ an alcohol impact area; or

(B) Threatens the welfare, health, peace(;) or safety of ~~((the))~~ an alcohol impact area's visitors ~~((and))~~ or occupants;

(ii) ~~((There is))~~ Submit findings of fact that demonstrate a pervasive pattern of public intoxication ~~((and/or))~~ or public consumption of ~~((alcohol))~~ liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, ~~((or))~~ other similar records, community group petitions, public testimony or testimony by current or former chronic public inebriants; ~~((and))~~

(iii) ~~((A good faith effort has been made by the government subdivision to control the problem through voluntary efforts that may include cooperation with neighborhood citizen and/or business organizations, and must include the notification of licensees within the proposed AIA of public intoxication problems and of voluntary remedies available to them to resolve the problem.))~~

(e) The AIA will take effect on the date of the board's resolution extending recognition to the AIA)) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section);

(iv) Explain why past voluntary measures failed to sufficiently resolve the problem; and

(v) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(3) ~~((Once an AIA is recognized by the board, what processes, conditions, or restrictions may the board apply?))~~ **What conditions or restrictions may the board recognize for an alcohol impact area?**

(a) ~~((The board will apply a unique local license review process for liquor license applications, assumptions, and renewals within the AIA.))~~

(b) The board may place conditions or restrictions on the off-premises sale privilege of liquor licenses within the AIA. These restrictions must be reasonably related to reducing chronic public inebriation or illegal activity associated with off-premises alcohol sales and/or consumption. ~~((These))~~ Restrictions may include, but are not limited to:

(i) ~~((Restrictions on the))~~ Business hours of operation for off-premises ~~((alcohol))~~ liquor sales ~~((within the AIA));~~

(ii) ~~((Restrictions on the))~~ Off-premises sale of certain ~~((alcohol))~~ liquor products within ~~((the AIA))~~ an alcohol impact area; ~~((and))~~ or

(iii) ~~((Restrictions on alcohol))~~ Container sizes available for off-premises sale ~~((within the AIA)).~~

(b) Product restrictions (for example, prohibition of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body.

(c) Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriants; litter pickup; or other statistically documented evidence that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.

(d) Restricted beer and wine products must have minimum alcohol content of five and seven-tenths percent by volume and twelve percent by volume, respectively.

(e) Upon board approval and upon an individual product by individual product basis, a local authority may restrict a product that is already restricted in another board-recognized alcohol impact area provided that a product is significantly materially similar (for example, comparable alcohol percent content, container size or liquor category such as alcoholic energy drinks) to products already restricted in its own alcohol impact area. Upon board approval and upon an individual product by individual product basis, a local authority may also restrict a product that is significantly materially similar to products already restricted in its own alcohol impact area. In both cases, a local authority must demonstrate to the board, in writing, the material similarities and need for product inclusion, but the board will not require a local authority to submit extensive documented evidence as described in (c) of this subsection.

(f) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.

**(4) What ~~((are the circumstances required for the board to restrict the off-premises sale of alcohol within an AIA))~~ types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?** ~~((The board may restrict the off-premises sale of alcohol within an AIA, subject to all of the following conditions:~~

(a) Product restrictions must be requested by the government subdivision's law enforcement agency or public health authority;

(b) The board must find that the off-premises sale of such alcohol products is reasonably linked to the problems associated with chronic public inebriation; and

(c) The government subdivision must have shown that voluntary efforts have failed to significantly reduce the impact of chronic public inebriation, or that voluntary efforts need augmentation by license restrictions described in subsection (3) of this section.

**(5) What type of voluntary efforts must the government subdivision attempt before the board will implement mandatory product restrictions?** ~~Before the board will implement mandatory product restrictions, the government subdivision's voluntary efforts must include:~~

(a) Notification of all off-premises sales licensees in the proposed AIA that behavior associated with alcohol sales is having an impact on chronic public inebriation.

~~(b) Documentation that the government subdivision has made reasonable efforts to implement voluntary agreements to promote business practices that reduce chronic public inebriation and promote public welfare, health, peace, and safety with licensees within the AIA who sell alcohol for off-premises consumption.))~~

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Licensees voluntarily discontinuing to sell a product;

(iv) Distribution of educational materials to chronic public inebriants or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

~~((Implementation of these voluntary agreements must have been attempted))~~ A local authority must implement these voluntary agreements for at least six months before ~~((information is presented))~~ a local authority may present documentation to the board that voluntary efforts ~~((have))~~ failed ~~((to))~~ to adequately mitigate the effects of chronic public inebriation and need augmentation.

~~((6) If restrictions are approved for an AIA, the board will.))~~ **(5) What will the board do once it recognizes an alcohol impact area?**

~~((Notify the appropriate beer and wine distributors of the product restrictions placed on off-premises licensees within the AIA.~~

~~(b) When product restrictions on the off-premises sale of alcohol products are placed on licensees within an AIA, no state liquor store or agency within the AIA may sell these restricted products.))~~ The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

(b) No state liquor store or agency located within an alcohol impact area may sell that alcohol impact area's restricted products.

(c) The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

~~((7))~~ **(6) What is the review process for liquor license applications, license assumptions, and renewals ~~((for licensees))~~ inside ~~((a recognized AIA))~~ an alcohol impact area?** ~~((Subject to the provisions of RCW 66.24-010(8).))~~

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of sixty calendar days for ~~((the government subdivision))~~ a local authority to comment ~~((on))~~ upon the ~~((liquor license))~~ application ~~((or assumption))~~.

(i) ~~((The government subdivision))~~ A local authority may, and is encouraged to, submit comment before the end of ~~((this sixty-day period, but))~~ a comment period. A local authority may request an extension of ~~((this))~~ a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) ~~((The requesting government subdivision))~~ A local authority will notify ~~((the))~~ a licensee or applicant when ~~((an extension of the))~~ a local authority requests the board to extend a sixty-day comment period ~~((is requested))~~.

(b) For renewals, ~~((notice will be mailed to the government subdivision not less than))~~ the board will notify a local authority at least ninety calendar days before ~~((the))~~ a current license expires. The same requirements in (a)(i) and (ii) of this subsection apply to the ninety-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

~~((8))~~ (7) When and for how long will an ((AIA)) alcohol impact area be in effect, and may an alcohol impact area be changed? ~~((An AIA will remain in effect until:~~

~~((a) The sponsoring government subdivision repeals the specific enabling ordinance that originally defined the specific AIA recognized by the board; or~~

~~((b) The board repeals its recognition of an AIA as the result of a public hearing, called by the board acting on its own initiative or at the request of a community organization within the AIA, made after the AIA has been in effect for at least two years.))~~

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than thirty calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits support-

ing documentation (see subsections (2) and (3) of this section).

(d) Prohibition of a new product added to an existing prohibited products list takes effect no less than thirty calendar days following the board's recognition of a modified prohibited products list.

(8) Reporting requirements and five-year assessments.

(a) A local authority shall submit annual reports to the board that clearly demonstrate the intended effectiveness of an alcohol impact area's conditions or restrictions. Reports are due no later than sixty calendar days following each anniversary of the board's recognition of an alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, tenth, fifteenth, et cetera, anniversary of the board's recognition of an alcohol impact area. The five-year assessment process is as follows:

(i) Within ten calendar days of receiving a local authority's fifth, tenth, fifteenth, et cetera, annual report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has twenty calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one twenty calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the initial twenty-day deadline.

(iii) The board will complete an assessment within sixty calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) Comments or petitions submitted by affected parties; and

(ii) Each annual report submitted during a five-year period.

An assessment shall also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation, or illegal activity associated with liquor sales or consumption, within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and



(iii) Demonstrate how the absence of conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one twenty-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the twenty-day deadline.

### WSR 10-19-066

#### PERMANENT RULES

#### LIQUOR CONTROL BOARD

[Filed September 15, 2010, 11:55 a.m., effective October 16, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Implementation of legislation passed in 2010, SSB 6485, required changes in current rule and new rules to clarify and provide further guidance to licensees who are impacted by the new regulations. The entire chapter was also reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order: Amending WAC 314-28-010, 314-28-050, 314-28-060, 314-28-070, and 314-28-090.

Statutory Authority for Adoption: RCW 66.24.145 and 66.08.030.

Adopted under notice filed as WSR 10-16-004 on July 21, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 15, 2020 [2010].

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-010 Records.** (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers:

(a) Must keep records concerning any spirits, whether produced or purchased, for ~~((two))~~ three years after each sale. ~~((These records must be kept separate from any other records.))~~ A distiller may be required to report on forms approved by the board;

(b) Must, in case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; and

(c) Must submit duplicate copies of transcripts, notices, or other data that are required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records, in the case of retail sales to consumers ~~((, in addition to the records listed in subsection (1)(b) of this section))~~; and

(b) Submit duplicate copies of its monthly returns to the board upon request ~~((, in addition to the duplicate copies listed in subsection (1)(c) of this section. The same conditions apply as in subsection (1)(e) of this section))~~.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-050 What does a craft distillery license allow?** (1) A craft distillery license allows a licensee to:

(a) Produce ~~((twenty))~~ sixty thousand proof gallons or less of ~~((its own))~~ spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special-ordered by an individual Washington state liquor store;

(d) Sell to out-of-state entities;

(e) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040 ~~((and all applicable WACs, and are subject to taxes under WAC 314-28-070))~~; ~~((and))~~

(f) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and ~~((all applicable WACs, including WAC 314-44-005 and))~~ WAC 314-64-08001. Samples are considered sales and are subject to taxes ~~((under WAC 314-28-070))~~;

(g) Contract produced spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors ~~((, but only to on-premises customers, to the board, and to out-of-state entities, as stipulated in subsections (1)(b), (c) and (d) of this section))~~.

NEW SECTION

**WAC 314-28-055 What are the requirements for contract production by craft distilleries?** (1) This section clarifies the language for contract production found in RCW 66.24.145. For the purposes of this section, contract production is when one craft distillery, referred to as the "contractor," produces distilled spirits for a distillery licensed under RCW 66.24.140, manufacturers licensed under RCW 66.24.150, wine growers licensed under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as RCW and WAC allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(2) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(3) The contractor and contractee are required to obtain any federal approvals.

(4) Maintaining qualification as a craft distillery. Each craft distillery, whether in the capacity of a contractor or contractee, is allowed to produce sixty thousand gallons or less of total product per year. Total product, in this instance, includes:

(a) Product owned and produced by the craft distillery;

(b) Product owned and produced by the craft distillery for export from the state;

(c) Product owned by the craft distillery but produced by another craft distillery;

(d) Product produced by the craft distillery on behalf of another craft distillery;

(e) Product produced by the craft distillery under contract for another distillery, manufacturer, or grower.

(5) Reporting and recordkeeping.

(a) The contractor must include all product produced including contract production when it reports its monthly production to the board.

(b) The contractee must include the product contract produced by another craft distillery when the contractee reports its monthly production to the board.

(c) The contractor's and the contractee's recordkeeping documents must include the product information for each contract. The information must show the quantities produced.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-060 What are the general requirements for a craft distillery license?** Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the board(~~(-Other documents may include, but are not limited to, a personal criminal history statement, a financial~~

~~statement, the right to the real property, and the tied house statement));~~

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the (~~(monthly)~~) production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington;

(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;

(5) Purchase any spirits used for sampling at the distillery premises from the board; and

(6) Purchase any spirits used for samples provided to retailers from the board(~~(-and~~

~~(7) Meet any other applicable requirements stated in RCW and WAC)).~~

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-070 What are the monthly reporting and payment requirements for a craft distillery license?**

(1) A craft distiller must submit monthly reports and payments to the board.

~~((1) Monthly reports.))~~ The required monthly reports must be:

(a) On a form furnished by the board or in a format approved by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge (~~((see WAC 314-64-08001 for more information))~~).

(a) Any on-premises sale or sample provided to a (~~(consumer))~~ customer is considered a sale reportable to the board.

(b) Samples provided to retailers are considered sales reportable to the board.

(c) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-090 Craft distilleries—Selling in-state, retail pricing and product listing—Selling out-of-state—Special orders. (1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?**

(a) ~~((Selling a spirits product at a state liquor store.))~~ There are two ways to sell a spirits product at a state liquor store ~~((One way is))~~:

(i) ~~Through the special order process ((which is explained in subsection (3) of this section ("How to special order a product.")). The second way is))~~; and

(ii) ~~Through product listing ((explained in this subsection))~~.

(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.

~~((b) Selling a spirits product at a craft distillery premises.))~~ (c) Before a craft distillery licensee may sell its product to a customer ~~((i.e., any individual who is))~~ twenty-one years old or older) at its distillery premises, a licensee must ~~((first))~~:

(i) Obtain a retail price from the board ~~((;))~~;

(ii) Sell its product to the board ~~((;))~~; and ~~((then))~~

(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.

~~((c))~~ (d) *Listing a product.* A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.

(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(ii) The purchasing division shall apply the same consideration to all listing requests.

(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see ~~((subsection (3) of this section, "How to special order a product."))~~ chapter 314-74 WAC).

~~((d))~~ (e) *Obtaining a retail price.* A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A

pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.

(i) Pricing may not be changed within a calendar month.

(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.

**(2) What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?**

(a) A craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and the composition of raw materials used in production of the product ~~((see WAC 314-28-070))~~.

(b) Product produced in-state and sold out-of-state counts toward a licensee's ~~((twenty))~~ sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

(c) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement ~~((see WAC 314-28-060))~~.

(d) Product sold out-of-state is not subject to retail pricing by the board.

(e) A craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

~~((3) How to special order a product.~~

(a) If a customer, such as an individual person or a restaurant licensee, wants to purchase a spirits product that is not carried on the shelf at a state liquor store, then the following steps may be taken to special order the product:

(i) ~~The customer must place a special order request with a state liquor store;~~

(ii) ~~The store forwards the special order request to the board's purchasing division;~~

(iii) ~~The purchasing division orders the product from the craft distillery licensee. To receive an order, the craft distillery licensee must have a product listing or a product retail price, as described in subsection (1)(c) and (d) of this section;~~

(iv) ~~The craft distillery licensee sends the product to the board's distribution center; and~~

(v) ~~The distribution center ships the product to the state liquor store that originally took the customer's special order request (see (a)(ii) of this subsection).~~

~~(b) For additional information regarding special order requests, refer to chapter 314-76 WAC.)~~

## WSR 10-19-071

### PERMANENT RULES

### DEPARTMENT OF HEALTH

[Filed September 16, 2010, 9:38 a.m., effective October 15, 2010]

Effective Date of Rule: October 15, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW

34.05.380 (3)(c) allows for an earlier adoption if there is imminent peril to public health or safety. These rules are necessary in order to continue the current level of credentialing and disciplinary activities for health care professionals. If these activities are impaired, it could put patients at risk and create a barrier to obtaining health care.

RCW 34.05.380 (3)(a) allows for an earlier adoption date if action is required by statute. The legislature approved these fee increases through the 2010 budget bill (ESSB 6444, chapter 286, Laws of 2010). The rules are adopted immediately upon filing and effective October 15, 2010.

Purpose: The rules increase or adopt fees for the professions listed below as authorized by the 2010 legislature (ESSB 6444). The rules also amend the name of the acupuncture profession as a result of SSB 6280 (chapter 286, Laws of 2010). These increases are necessary for programs to remain in operation and ensure patient safety.

Citation of Existing Rules Affected by this Order: WAC 246-802-990, acupuncture (East Asian medicine practitioner); 246-817-990 dentist; 246-817-99005 dental assistant and expanded function dental auxiliary (EFDA); 246-812-990 denturist; 246-809-990 mental health counselor and social worker; 246-834-990 midwifery; 246-841-990 nursing assistant; 246-840-990 RN, LPN, ARNP, and nurse technologist; 246-851-990 optometrist; 246-926-990 radiologic technologist and X-ray technician; 246-927-990 recreational therapy; and 246-928-990 respiratory care.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and ESSB 6444 (chapter 37, Laws of 2010).

Other Authority: RCW 43.70.110 and 43.70.250.

Adopted under notice filed as WSR 10-15-120 on July 21, 2010.

Changes Other than Editing from Proposed to Adopted Version: The amount of the increase for the nurse technologist renewal fee was reduced. The renewal fee will be \$91.00. The amount of the increases for the respiratory therapy fees was reduced. The application fee will be \$210.00, the renewal fee \$165.00, and the late renewal penalty fee \$110.00.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 12, Repealed 0.

Date Adopted: October 16, 2010.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

**WAC 246-802-990 ((Acupuncture)) East Asian medicine practitioner fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	<del>\$(50.00)</del> 100.00
License renewal	<del>((90.00))</del> 196.00
Inactive license renewal	50.00
Late renewal penalty	<del>((50.00))</del> 105.00
Expired license reissuance	50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
<del>((Acupuncture)) East Asian medicine training program application</del>	500.00
UW library access fee	9.00

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than four times.

Title	Fee
(3) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$150.00
Initial license	75.00
Renewal	140.00
Late renewal penalty	70.00
Expired license reissuance	85.00
Duplicate license	10.00
Certification of license	10.00

Title	Fee
(4) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	((125.00))
	<u>140.00</u>
Initial license	125.00
Renewal	((75.00))
	<u>138.00</u>
Late renewal penalty	((50.00))
	<u>60.00</u>
Expired license reissuance	65.00
Duplicate license	10.00
Certification of license	10.00
UW library access fee	25.00
(5) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	125.00
Initial license	125.00
Renewal	((105.00))
	<u>126.00</u>
Late renewal penalty	((52.50))
	<u>63.00</u>
Expired license reissuance	72.50
Duplicate license	10.00
Certification of license	10.00
UW library access fee	25.00
(6) The following nonrefundable fees will be charged for licensed marriage and family therapy associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(7) The following nonrefundable fees will be charged for licensed mental health counselor associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(8) The following nonrefundable fees will be charged for licensed advanced social worker associates and licensed independent clinical social worker associates:	
Application	50.00

Title	Fee
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

**WAC 246-812-990 Denturist fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$((1,450.00))
	<u>1,500.00</u>
Examination	1,500.00
Reexamination, written	500.00
Reexamination, practical	500.00
License renewal	((1,600.00))
	<u>1,855.00</u>
Late renewal penalty	300.00
Expired license reissuance	300.00
Inactive license renewal	750.00
Expired inactive license reissuance	300.00
Duplicate license	15.00
Certification of license	25.00
Multiple location licenses	50.00

AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

**WAC 246-817-990 Dentist fees and renewal cycle. (1)**

Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
<b>Original application by examination*</b>	
Initial application	\$700.00
<b>Original application - Without examination</b>	
Initial application	700.00
Initial license	700.00
<b>Faculty license application</b>	560.00
<b>Resident license application</b>	115.00
<b>License renewal:</b>	
Renewal	<del>((375.00))</del> <u>551.00</u>
Surcharge - impaired dentist	25.00
Late renewal penalty	<del>((200.00))</del> <u>288.00</u>
Expired license reissuance	300.00
<b><u>Inactive renewal</u></b>	<u>125.00</u>
<b><u>Inactive late renewal penalty</u></b>	<u>50.00</u>
<b>Duplicate license</b>	15.00
<b>Certification of license</b>	25.00
<b>Anesthesia permit</b>	
Initial application	150.00
Renewal - (three-year renewal cycle)	150.00
Late renewal penalty	75.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

\* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

**AMENDATORY SECTION** (Amending WSR 08-13-069, filed 6/13/08, effective 7/1/08)

**WAC 246-817-99005 Dental assistant and expanded function dental auxiliary fees and renewal cycle.** (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this sec-

tion if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for dental assistant and expanded function dental auxiliary:

Title of Fee - Dental Professionals	Fee
Registered dental assistant application	\$40.00
Registered dental assistant renewal	<del>((20.00))</del> <u>21.00</u>
Registered dental assistant late	<del>((20.00))</del> <u>21.00</u>
Registered dental assistant expired reactivation	20.00
Licensed expanded function dental auxiliary application	175.00
Licensed expanded function dental auxiliary renewal	160.00
Licensed expanded function dental auxiliary late	80.00
Licensed expanded function dental auxiliary expired reactivation	50.00
Duplicate	15.00
Verification	25.00

**AMENDATORY SECTION** (Amending WSR 06-13-012, filed 6/9/06, effective 7/1/06)

**WAC 246-834-990 Midwifery fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	<del>\$(450.00))</del> <u>500.00</u>
National examination administration (initial/retake)	103.00
State examination (initial/retake)	<del>((154.50))</del> <u>155.00</u>
Renewal	<del>((450.00))</del> <u>500.00</u>

Title of Fee	Fee
Late renewal penalty	<del>((225.00))</del> <u>250.00</u>
Duplicate license	25.00
Certification of license	25.00
Application fee—Midwife-in-training program	978.75
Expired license reissuance	300.00

**AMENDATORY SECTION** (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

**WAC 246-840-990 Fees and renewal cycle.** (1) Applicants for a practical nurse license must pay the application fee and the nursing center surcharge fee when applying for a license. Licenses for practical nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses must pay the renewal fee and the nursing center surcharge fee when renewing licenses.

(2) Applicants for a registered nurse license must pay the application fee, the RN UW library fee, and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the RN UW library fee, and the nursing center surcharge fee when renewing licenses.

(3) Licenses for advanced registered nurse must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(4) Registrations for nursing technicians must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The renewal must be accompanied by an attestation as described in RCW 18.79.370. This attestation will include the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010 (15).

(5) The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(6) The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:

RN/LPN fees:	
Title of Fee	Fee
RN application (initial or endorsement)	<del>\$(65.00)</del> <u>67.00</u>
LPN application (initial or endorsement)	<del>((85.00))</del> <u>87.00</u>
RN license renewal	<del>((50.00))</del> <u>76.00</u>
LPN license renewal	<del>((65.00))</del> <u>91.00</u>
Late renewal penalty	50.00
Expired license reissuance	70.00
Inactive renewal	40.00
Expired inactive license reissuance	40.00
Inactive late renewal penalty	30.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
RN UW library fee	20.00

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per specialty)	<del>\$(85.00)</del> <u>92.00</u>
ARNP renewal with or without prescriptive authority (per specialty)	<del>((65.00))</del> <u>96.00</u>
ARNP late renewal penalty (per specialty)	50.00
ARNP duplicate license (per specialty)	20.00
ARNP written verification of license (per specialty)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	<del>\$(130.00)</del> <u>92.00</u>
Renewal of registration	<del>((90.00))</del> <u>91.00</u>
Duplicate registration	15.00
Registration late renewal penalty	50.00

**AMENDATORY SECTION** (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

**WAC 246-841-990 Nursing assistant—Fees and renewal cycle.** (1) Certificates and registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program

and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registrations:

Title of Fee	Fee
Application - registration	<del>\$(30.00)</del> <u>48.00</u>
Renewal of registration	<del>((40.00))</del> <u>53.00</u>
Duplicate registration	10.00
Registration late penalty	<del>((40.00))</del> <u>53.00</u>
Expired registration reissuance	<del>((40.00))</del> <u>52.00</u>

(3) The following nonrefundable fees will be charged for certifications:

Title of Fee	Fee
Application for certification	<del>((30.00))</del> <u>48.00</u>
Certification renewal	<del>((40.00))</del> <u>53.00</u>
Duplicate certification	10.00
Certification late penalty	<del>((40.00))</del> <u>53.00</u>
Expired certification reissuance	<del>((40.00))</del> <u>52.00</u>

**AMENDATORY SECTION** (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

**WAC 246-851-990 Optometry fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$175.00
Out-of-state seminar	100.00
License renewal	<del>((150.00))</del> <u>199.00</u>

Title of Fee	Fee
Late renewal penalty	<del>((75.00))</del> <u>100.00</u>
Expired license reissuance	75.00
Inactive license renewal	75.00
Duplicate license	15.00
Certification of license	25.00
UW library fee	25.00

**AMENDATORY SECTION** (Amending WSR 10-10-043, filed 4/27/10, effective 5/28/10)

**WAC 246-926-990 Radiologist assistants; diagnostic, therapeutic, and nuclear medicine radiologic technologists; X-ray technicians—Certification and registration fees and renewal cycle.** (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

Title of Fee	Fee
(2) The following nonrefundable fees will be charged for certified diagnostic, therapeutic, and nuclear medicine radiologic technologists:	
Application	\$150.00
Renewal	<del>((70.00))</del> <u>105.00</u>
Late renewal penalty	50.00
Expired certificate reissuance	80.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(3) The following nonrefundable fees will be charged for registered X-ray technicians:	
Application	<del>((75.00))</del> <u>105.00</u>
Renewal	<del>((75.00))</del> <u>103.00</u>
Late renewal penalty	50.00
Expired reissuance	50.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(4) The following nonrefundable fees will be charged for certified radiologist assistants:	
Application	150.00
Renewal	150.00
Late renewal penalty	75.00
Expired reissuance	75.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00



AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

**WAC 246-927-990 Recreation therapy fees and renewal cycle.** (1) Registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registered recreational therapists:

Title of Fee	Fee
Application	\$205.00
Renewal	<del>(+55.00)</del> 230.00
Late renewal penalty	<del>((77.50))</del> 116.00
Expired registration reissuance	90.00
Duplicate registration	15.00
Certification of certificate	25.00

AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

**WAC 246-928-990 Respiratory care fees and renewal cycle.** (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	<del>\$((+50.00))</del> 210.00
Temporary practice permit	50.00
Duplicate license	15.00
Verification of licensure	15.00
Renewal	<del>((+10.00))</del> 165.00
Late renewal penalty	<del>((55.00))</del> 110.00
Expired license reissuance	65.00

**WSR 10-19-073**

**PERMANENT RULES**

**WASHINGTON STATE PATROL**

[Filed September 16, 2010, 10:05 a.m., effective October 17, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Provides clarifying language for the certification process of an alternative traction tire device in WAC 204-24-070 and provides a definition for alternative traction tire device in WAC 204-24-015.

Citation of Existing Rules Affected by this Order: Amending WAC 204-24-015 and 204-24-070.

Statutory Authority for Adoption: RCW 46.37.420 and 46.37.005.

Adopted under notice filed as WSR 10-16-076 on July 30, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 9, 2010.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

**WAC 204-24-015 Definitions.** (1) "All wheel drive" means a vehicle which has four-wheel drive capability and may be driven with all wheels in gear.

(2) "Alternative traction device (ATD)" means pneumatically driven chains which, when engaged, spin under the drive wheels automatically as traction is lost or a traction device differing from metal chains in construction, material or design but capable of providing traction equal to or exceeding that of such metal chains under similar conditions.

(3) "Cable laid rope" means a compound laid rope consisting of several ropes or several layers of strands laid together into one rope.

~~((3))~~ (4) "Cable tire chains" means any ladder-type cable tire chain assemblies designed for use on tires that have been manufactured in accordance with the standards of the Tire & Rim Association, Inc.; 3200 West Market Street; Akron, Ohio 44313.

~~((4))~~ (5) "Cross cable fastener" means any suitable fastener used to attach each cross cable to the side cable. The fastener must be constructed and assembled to prevent accidental detachment.

~~((5))~~ (6) "Cross cable traction reinforcement sleeves" means a device that is constructed of the manufacturer's specified material and of suitable length and width to maximize traction, braking, cornering and longevity.

~~((6))~~ (7) "Fastener" means any suitable connecting device, secured to one end of a side cable constructed so that it can connect to the opposing end and be easily closed (engaged or fastened) and be readily opened (released) by hand.

~~((7))~~ (8) "Link tire chains" means tire chains which consist of at least two chain loops, one on each side of the tire, connected by evenly spaced metal cross chains across the tire tread.

~~((8))~~ (9) "Reinforced cross cables" means stranded cable wrapped or covered to provide increased resistance to abrasive wear. This covering may be either a hard drawn spring wire, a high-carbon steel wire or nylon type 6 or 12. The wrapped or covered cable must be enclosed by traction reinforcement sleeves covering said cable essentially from side connector to side connector. Cross cable must be of specified length and provide proper drape over the tire tread.

~~((9))~~ (10) "Side cable" means stranded cable to complete one full circumference along the tire sidewall.

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

**WAC 204-24-070 Approval of tire chains or traction devices.** (1) Any tire chain, wheel chains, or studded tires~~(; or other traction devices)~~ meeting the standards in this chapter or certified under one of the following:

(a) Conformance to Federal Motor Vehicle Safety Standards, or, if none,

(b) Conformance to current standards and specifications of the Society of Automotive Engineers~~(; or, if none,~~

~~(c) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, or the American Association of Motor Vehicle Administrators;))~~ will be considered as an approved type chain, or studded tire~~(; or other traction device by the state patrol)~~.

(2) In order for an alternative traction device to be considered approved:

(a) The alternative traction device must be:

(i) Tested in accordance with a recognized standard; and  
(ii) Meet or exceed the standard as compared to the results of a referenced tire chain approved for use in the United States tested using the same standard.

(b) The following information must be provided to the Washington state patrol:

(i) Certification of test results, which must contain the following statement "I certify that the test methods, conditions and results reported are accurate and complete" and bear the signature of the tester.

(ii) A copy of the testing standards used.

(iii) Documentation of the testing results, which must include the data produced for each test comparing the alternative traction device to the referenced tire chain.

(3) Links to the Code of Federal Regulations are available on the Washington state patrol web site at [www.wsp.wa](http://www.wsp.wa).

gov. Copies of the CFR may also be ordered through the United States Government Printing Office, 732 N. Capitol Street, N.W., Washington, D.C. 20401. Copies of the SAE standards are available for review at the Washington State Patrol, 210 11th Avenue, Olympia, WA 98504, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096.

#### WSR 10-19-074

#### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed September 16, 2010, 10:08 a.m., effective October 17, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Provides clarifying language which would remove redundant information from WAC 204-21-140 and outline definition for terms used in WAC 204-21-140 under WAC 204-21-020.

Citation of Existing Rules Affected by this Order: Amending WAC 204-21-020 and 204-21-140.

Statutory Authority for Adoption: RCW 46.37.320 and 46.37.005.

Adopted under notice filed as WSR 10-16-077 on July 30, 2010.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail [melissa.vangorkom@wsp.wa.gov](mailto:melissa.vangorkom@wsp.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 9, 2010.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-19-104, filed 9/17/08, effective 10/18/08)

**WAC 204-21-020 Definitions.** (1) "Agricultural equipment" means any farm vehicle required by RCW 46.37.160 to have hazard warning lamps.

(2) "Animal control vehicle" means any vehicle, either publicly or privately owned, which is used primarily for transportation of animals to or from animal shelters, humane society facilities, or veterinary medicine facilities.

~~((2))~~ (3) "Authorized emergency vehicle" means any vehicle of any fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington state patrol, ambulance service, public or private, licensed by the department of social and health services or operated by any of the agencies named above, or any other vehicle authorized in writing by the state patrol.

~~((3))~~ (4) "CFR" means the Code of Federal Regulations.

~~((4))~~ (5) "Deceleration warning light," excluding stop lamps, means a device that indicates to a following driver the deceleration of the vehicle ahead.

~~((5))~~ (6) "Electronic light modulation" means the periodic change in intensity of light, controlled by an all electric modulating device in the electrical circuit of the lighting system.

~~((6))~~ (7) "Electronic modulation" means using one hundred percent electronic circuitry instead of mechanical metallic switches.

~~((7))~~ (8) "Emergency tow truck" means a motor vehicle that is especially designed and constructed principally for the purpose of recovery and/or towing of disabled, abandoned or damaged vehicles and not otherwise generally used in transporting goods or persons.

~~((8))~~ (9) "Flashing" means any lamp which emits a beam of light which is broken intermittently and regularly by use of an electronic or electric switch, a rotating reflector, a rotating lamp, or a strobe lamp; or a lamp which emits a steady beam of light which is intermittently and regularly directed away from any viewer by means of a rotating or oscillating reflector or lamp assembly. Flashing lamps are not to be confused with modulated lamps which intermittently and regularly decrease the power to the lamp filament so as to dim the light output but do not cause a total break in the light beam.

~~((9))~~ (10) "FMVSS" means the Federal Motor Vehicle Safety Standards 49 Code of Federal Regulations (CFR) Part 571.

~~((10))~~ (11) "Hazardous materials response team vehicle" means any vehicle either publicly or privately owned which is used for responding to hazardous materials incidents.

~~((11))~~ (12) "Headlamp flashing system" means an automatic method for controlling the high beams from the headlamps so that they can be alternately flashed in sequence on opposite sides of the front of the vehicle as a warning signal.

~~((12))~~ (13) "Industrial equipment" means any vehicle which is authorized to use amber lamps under WAC 204-21-130 for the purpose of landscaping, construction services, loading, digging, grounds keeping, and highway maintenance.

(14) "Law enforcement agency" means any municipal, port district or tribal police department, county police department or sheriff's office, the Washington state patrol, or any other state or federal agency which is publicly authorized to carry out law enforcement duties which include the authority to stop and detain motor vehicles on the public highways of this state.

~~((13))~~ (15) "Law enforcement vehicle" means a publicly owned or leased vehicle operated by a law enforcement

agency and which is used for the law enforcement functions of the agency.

~~((14))~~ (16) "Other construction and maintenance vehicle" means any vehicle owned or operated by a private company which is in the process of providing highway construction or maintenance services or is working in conjunction with any public utility.

~~((15))~~ (17) "Oversize unit" means any vehicle towing a load that exceeds legal dimensions which may be equipped with flashing amber lights in addition to any other lights required by law.

~~((16))~~ (18) "Percent modulation" equals time-weighted power input with modulation to headlamp divided by time-weighted power input without modulation to headlamp times one hundred.

~~((17))~~ (19) "Pilot car" means any vehicle which is used to provide escort for overlegal size loads upon the roadways of this state.

~~((18))~~ (20) "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission.

~~((19))~~ (21) "Public utilities vehicle" means any vehicle used for construction, operations, and maintenance, and which is owned or operated by a public or private utility, including, but not limited to, companies providing water, electricity, natural gas, telephone, television cable services, and railroads.

~~((20))~~ (22) "Rural newspaper carrier vehicle" means any vehicle driven on rural roads by carriers delivering newspapers on their route.

~~((21))~~ (23) "SAE" means the Society of Automotive Engineers. Copies of SAE Standards are available for review at the Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

~~((22))~~ (24) "Search and rescue team vehicle" means any vehicle either publicly or privately owned which is used for responding to search and rescue situations.

~~((23))~~ (25) "Signal lamps" means red lamps mounted on the vehicle to be used in conjunction with the "stop signal" when the bus is loading or unloading passengers under certain conditions.

~~((24))~~ (26) "Tow truck" means any vehicle engaged in removing disabled or abandoned vehicles from the roadway and which is used primarily for that purpose.

**AMENDATORY SECTION** (Amending WSR 08-19-104, filed 9/17/08, effective 10/18/08)

**WAC 204-21-140 Flashing warning lamps.** Flashing warning lamps may be mounted at any height and must:

(1) Meet the SAE Standards outlined for the type of vehicle as outlined in the table below.

Vehicle Type	Standard Adopted
Agricultural equipment	SAE J974
<del>((Authorized emergency maintenance, volunteer firefighter, and service vehicles</del>	SAE J595))
Industrial equipment	SAE J96

(2) Be mounted so that the entire projected area of the lens is visible from all eye heights of drivers of other vehicles at angles within forty-five degrees left to forty-five degrees right of the front of the vehicle. If the light within these required angles is blocked by the vehicle or any substantial object on it, an additional warning lamp must be displayed within the obstructed angle.

**WSR 10-19-081  
PERMANENT RULES  
DEPARTMENT OF  
SERVICES FOR THE BLIND**

[Filed September 16, 2010, 4:53 p.m., effective October 17, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the proposed amendatory changes to the following are to:

WAC 67-16-030, clarify background check requirements for contractors, vendors and service providers. Delete ten working day notification of finding requirement.

WAC 67-16-040, update WAC 356-040-010 [356-34-010] to ~~357-040-010~~ [357-40-010]. Add language under subsection (10) referring to appeal processes.

Citation of Existing Rules Affected by this Order: Amending WAC 67-16-030 and 67-16-040.

Statutory Authority for Adoption: RCW 74.18.123 Background checks.

Adopted under notice filed as WSR 10-12-043 on May 25, 2010.

A final cost-benefit analysis is available by contacting Ellen Drumheller, Department of Services for the Blind, phone (360) 725-3836, fax (360) 407-0670, e-mail Ellen.Drumheller@dsb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended X [2], Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended X [2], Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 16, 2010.

Ellen Drumheller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-12-029, filed 5/26/04, effective 7/1/04)

**WAC 67-16-030 Background check process for contractors, vendors, and service providers.** (1) The director of the department of services for the blind (DSB) shall investigate the conviction records, pending charges and disciplinary board final decisions for contractors, vendors, and service providers who will or may have unsupervised access to DSB clients.

(2) The investigation shall consist of a background check as allowed under the Washington State Criminal Records Privacy Act, RCW 10.97.050; the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the Federal Bureau of Investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

(3) The director may waive the requirement for a background check if the contractor, vendor, or service provider has been cleared in a background check within the previous two years.

(4) When necessary, the director may engage a service provider, vendor, or contractor on a conditional basis, pending completion of the background check.

(5) The investigation shall include an examination of state and national criminal identification data. The director shall use the information solely for the purpose of determining the character, suitability and competence of the individual contractor or service provider to work with the department of services for the blind clients.

(6) The director shall provide the results of the background check in writing to the contractor, vendor, or service provider (~~within ten working days from receipt of the finding~~).

(7) The office of the director shall maintain confidential records of all background check information. Such information shall be limited to only those individuals processing the information within the department.

(8) The fingerprint criminal history records checks will be at the expense of the contractor or service provider.

(9) Current contractors, vendors, or service providers for whom disqualifying crimes are discovered in the background check process will be notified in writing (~~within ten working days from receipt of the finding~~). The written notification shall include notice of termination of the contract or service provider agreement and give the individual the right to request a review by the director of the department of services for the blind.

AMENDATORY SECTION (Amending WSR 04-12-029, filed 5/26/04, effective 7/1/04)

**WAC 67-16-040 Department of services for the blind—Background check requirements for employees, applicants, volunteers and student interns.** (1) The execu-

tive director of the department of services for the blind shall conduct background checks on all employees in covered positions and applicants under final consideration for a covered position. A covered position is one in which a person will or may have unsupervised access to vulnerable clients or potential clients with vision disability. These clients or potential clients may also have other disabilities, such as developmental disabilities or mental health disabilities. Employees and applicants shall authorize the executive director of the department of services for the blind to conduct a background check.

(2) The requirement for background checks shall include the following:

(a) Current employees as of July 1, 2004.

(b) Any employee seeking a covered position because of a reduction in force, reallocation, transfer, promotion or demotion.

(c) Any applicant prior to appointment into a covered position, except when appointment is made on a conditional basis under subsection (7)(b) of this section.

(3) A background check will be conducted on the final preferred candidate prior to appointment.

(4) The executive director of the department of services for the blind shall use the results of a background check solely to determine the character, competence and suitability of a person for a covered position. The background check information shall consist of:

(a) A fingerprint check using a complete Washington State criminal identification fingerprint card.

(b) Conviction records, pending charges, and disciplinary board final decisions (if applicable).

(c) Evidence that substantiates or mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(i) The employee or applicant's background check authorization and disclosure form;

(ii) The employee or applicant's age at the time of conviction, charge, or disciplinary board final decision;

(iii) The nature and severity of the conviction, charge, or disciplinary board final decision;

(iv) The length of time since the conviction, charge, or disciplinary board final decisions;

(v) The nature and number of previous offenses; and

(vi) The relationship between the nature of the conviction, pending charge, or disciplinary board final decision and the duties of the employee or applicant.

(5) A permanent employee with a background check disqualification may voluntarily resign, or be subject to disciplinary action (~~for any of the causes listed~~) in accordance with WAC (~~(356-34-010)~~) 357-40-010.

(6) Interim measures that may be used while the executive director explores availability of actions (not to exceed 30 calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time.

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave.

When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(7) The executive director of the department of services for the blind shall:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks;

(d) Provide the employee/applicant with the results of the background check in writing;

(e) Notify employees of their promotional register rights when they have been separated from their position, either voluntarily or involuntarily due to a background disqualification.

(8) Failure to authorize the executive director of the department of services for the blind to conduct a background check disqualifies an employee or applicant from consideration for any covered position including an employee's current covered position.

(9) An applicant for a covered position who is denied employment due to a disqualifying finding, shall be given the right to request a review of the decision by the executive director.

~~((#))~~ Requests for review must be in writing and received by the executive director within fifteen calendar days of the postmark date of the notification or date of hand-delivery.

(10) Permanent nonrepresented employees may appeal to the personnel ~~((appeals))~~ resources board in accordance with RCW 41.06.170 and rules promulgated thereunder including WAC ~~((358-20-101 and 358-20-020))~~ 357-52-010. Represented employees may appeal to the Washington state federation of state employees under the terms of the collective bargaining agreement.

(11) Nothing in this rule shall limit the department of services for the blind executive director's use of other authorities to conduct background checks.

(12) Information pertaining to background checks is confidential and shall be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee. Access to background check information shall be limited to only those individuals processing the information for the department. Misuse of background check information is a criminal offense and may result in prosecution and/or disciplinary action as provided under WAC ~~((356-34-010))~~ 357-40-010.

(13) The department of services for the blind will pay the costs associated with the background checks for current employees, applicants, volunteers, and student interns.

**WSR 10-19-085**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Purchasing Administration)

[Filed September 17, 2010, 1:23 p.m., effective October 18, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These amendments are required to meet the 2009-2011 final legislative budget reductions in sections 201 and 209 of ESHB 1244. Specifically, the department will restrict alien medical services to a federal emergency services component and limit state-only coverage to end-stage renal dialysis, cancer treatment, and nursing facility care.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0110.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244, sections 201 and 209).

Adopted under notice filed as WSR 10-08-085 on April 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-438-0115 Alien emergency medical program (AEM).

(1)(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are ~~prior~~ authorized by the department's inpatient mental health designee (see subsection (5) of this section).

(2) If a person meets the criteria in subsection (1), the department will cover and pay for all related medically necessary health care services and professional services provided;

(a) By a physician in his office or in a clinic setting immediately prior to the transfer to the hospital, resulting in a direct admission to the hospital; and

(b) ~~during~~ During ~~this~~ the specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be ~~prior~~ authorized by the department's inpatient mental health designee according to the requirements in WAC 388-550-2600.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 1, Repealed 0.

Date Adopted: September 17, 2010.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-07-024, filed 3/9/07, effective 4/9/07)

**WAC 388-438-0110 ((The)) Alien ((emergency)) medical ((AEM)) programs.** (1) ~~((The alien emergency medical (AEM) program is a required federally funded program. It is for aliens who are ineligible for other medicaid programs, due to the citizenship or alien status requirements described in WAC 388-424-0010.~~

~~(2) Except for the Social Security number, citizenship, or alien status requirements, an alien must meet categorical medicaid eligibility requirements as described in:~~

~~(a) WAC 388-505-0110, for an SSI-related person;~~

~~(b) WAC 388-505-0220, for family medical programs;~~

~~(c) WAC 388-505-0210, for a child under the age of nineteen; or~~

~~(d) WAC 388-523-0100, for medical extensions.~~

~~(3) When an alien has monthly income that exceeds the CN medical standards, the department will consider AEM medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.~~

~~(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have a qualifying emergency medical condition as described in WAC 388-500-0005.~~

~~(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.~~

~~(6) The department does not deem a sponsor's income and resources as available to the client when determining eligibility for the AEM program. The department counts only the income and resources a sponsor makes available to the client.~~

~~(7) Under the AEM program, covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:~~

~~(a) Organ transplants and related services;~~

~~(b) Prenatal care, except labor and delivery;~~

~~(c) School-based services;~~

~~(d) Personal care services;~~

~~(e) Waiver services;~~

~~(f) Nursing facility services, unless they are approved by the department's medical consultant; and~~

~~(g) Hospice services, unless they are approved by the department's medical consultant.~~

~~(8) The medical service limitations and exclusions described in subsection (7) also apply under the MN program.~~

~~(9) A person determined eligible for the AEM program is certified for three months. The number of three-month certification periods is not limited, but, the person must continue to meet eligibility criteria in subsection (2) and (4) of this section.~~

~~(10) A person is not eligible for the AEM program if that person entered the state specifically to obtain medical care))~~

To qualify for an alien medical program (AMP) a person must:

(a) Be ineligible for medicaid or other DSHS medical program due to the citizenship/alien status requirements described in WAC 388-424-0010;

(b) Meet the requirements described in WAC 388-438-0115, 388-438-0120, or 388-438-0125; and

(c) Meet categorical eligibility criteria for one of the following programs, except for the social security number or citizenship/alien status requirements:

(i) WAC 388-475-0050, for an SSI-related person;

(ii) WAC 388-505-0220, for family medical programs;

(iii) WAC 388-505-0210, for a child under the age of nineteen;

(iv) WAC 388-462-0015, for a pregnant woman;

(v) WAC 388-462-0020, for the breast and cervical cancer treatment program for women; or

(vi) WAC 388-523-0100, for medical extensions.

(2) AMP medically needy (MN) coverage is available for children, adults age sixty-five or over, or persons who meet SSI disability criteria. See WAC 388-519-0100 for MN eligibility and 388-519-0110 for spending down excess income under the MN program.

(3) The department does not consider a person's date of arrival in the United States when determining eligibility for AMP.

(4) The department does not consider a sponsor's income and resources when determining eligibility for AMP, unless the sponsor makes the income or resources available.

(5) A person is not eligible for AMP if that person entered the state specifically to obtain medical care.

(6) A person who the department determines is eligible for AMP may be eligible for retroactive coverage as described in WAC 388-416-0015.

(7) Once the department determines financial and categorical eligibility for AMP, the department then determines whether a person meets the requirements described in WAC 388-438-0115, 388-438-0120, or 388-438-0125.

## NEW SECTION

**WAC 388-438-0115 Alien emergency medical program (AEM).** (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 388-438-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets (a) and (b) below, or (c) below:

(a) The department's health and recovery services administration determines that the primary condition requiring treatment meets the definition of an emergency medical condition as defined in WAC 388-500-0005, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

(i) Inpatient;

(ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are

authorized by the department's inpatient mental health designee (see subsection (5) of this section).

(2) If a person meets the criteria in subsection (1), the department will cover and pay for all related medically necessary health care services and professional services provided:

(a) By a physician in his office or in a clinic setting immediately prior to the transfer to the hospital, resulting in a direct admission to the hospital; and

(b) During the specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(i) Medications;

(ii) Laboratory, x-ray, and other diagnostics and the professional interpretations;

(iii) Medical equipment and supplies;

(iv) Anesthesia, surgical, and recovery services;

(v) Physician consultation, treatment, surgery, or evaluation services;

(vi) Therapy services;

(vii) Emergency medical transportation; and

(viii) Non-emergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the department as described in subsection (3) of this section.

(3) The department will cover admissions to an LTAC facility or an inpatient PM&R unit if:

(a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;

(b) The person is transferred directly to this facility from the hospital; and

(c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 388-550-2590 for LTAC and WAC 388-550-2561 for PM&R).

(4) The department does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the department under this program. Exception: Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 388-530-2000, prescribed on the same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be authorized by the department's inpatient mental health designee according to the requirements in WAC 388-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program. Eligibility for the AEM program does not have to be established before an individual begins receiving emergency treatment.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the certification is only for the period of time the person is in the hospital, LTAC, or PM&R facility - the admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the certification is only for the date of service. If the person is in the hospital overnight, the certification will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is considered not within the scope of service categories as described in WAC 388-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the department to be a qualifying emergency medical condition, including but not limited to:

- (i) Laboratory x-ray, or other diagnostic procedures;
- (ii) Physical, occupational, speech therapy, or audiology services;
- (iii) Hospital clinic services; or
- (iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to the treatment of the qualifying emergency medical condition;

(c) Organ transplants, including pre-evaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section, including but not limited to:

- (i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;
- (ii) Prenatal care, except labor and delivery;
- (iii) Laboratory, radiology, and any other diagnostic testing;
- (iv) School-based services;
- (v) Personal care services;
- (vi) Physical, respiratory, occupational, and speech therapy services;
- (vii) Waiver services;
- (viii) Nursing facility services;
- (ix) Home health services;
- (x) Hospice services;
- (xi) Vision services;
- (xii) Hearing services;
- (xiii) Dental services;
- (xiv) Durable and non durable medical supplies;
- (xv) Non-emergency medical transportation;
- (xvi) Interpreter services; and
- (xvii) Pharmacy services, except as described in subsection (4).

(9) The services listed in subsection (8) of this section are not within the scope of service categories for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the department for visits or services that do not meet the qualifying criteria described in

this section. The department will identify and recover payment for claims paid in error.

#### NEW SECTION

**WAC 388-438-0120 Alien medical for dialysis and cancer treatment (state-only).** (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 388-438-0110 may be eligible for the scope of service categories under this program if the condition requires:

(a) Surgery, chemotherapy, and/or radiation therapy to treat cancer;

(b) Dialysis to treat acute renal failure or end stage renal disease (ESRD); or

(c) Anti-rejection medication, if the person has had an organ transplant.

(2) When related to treating the qualifying medical condition, covered services include but are not limited to:

(a) Physician and ARNP services, except when providing a service that is not within the scope of this medical program (as described in subsection (7) of this section);

(b) Inpatient and outpatient hospital care;

(c) Dialysis;

(d) Surgical procedures and care;

(e) Office or clinic based care;

(f) Pharmacy services;

(g) Laboratory, x-ray, or other diagnostic studies;

(h) Oxygen services;

(i) Respiratory and intravenous (IV) therapy;

(j) Anesthesia services;

(k) Hospice services;

(l) Home health services, limited to two visits;

(m) Durable and non durable medical equipment;

(n) Non-emergency transportation; and

(o) Interpreter services.

(3) All hospice, home health, durable and non durable medical equipment, oxygen and respiratory, IV therapy, and dialysis for acute renal disease services require prior authorization. Any prior authorization requirements applicable to the other services listed above must also be met according to specific program rules.

(4) To be qualified and eligible for coverage for cancer treatment under this program, the diagnosis must be already established or confirmed. There is no coverage for cancer screening or diagnostics for a workup to establish the presence of cancer.

(5) Coverage for dialysis under this program starts the date the person begins dialysis treatment, which includes fistula placement and other required access. There is no coverage for diagnostics or pre-dialysis intervention, such as surgery for fistula placement anticipating the need for dialysis, or any services related to preparing for dialysis.

(6) Certification for eligibility will range between one to twelve months depending on the qualifying condition, the proposed treatment plan, and whether the client is required to meet a spenddown liability.

(7) The following are not within the scope of service categories for this program:



- (a) Cancer screening or work-ups to detect or diagnose the presence of cancer;
  - (b) Fistula placement while the person waits to see if dialysis will be required;
  - (c) Services provided by any healthcare professional to treat a condition not related to, or medically necessary to, treat the qualifying condition;
  - (d) Organ transplants, including pre-evaluations and post operative care;
  - (e) Health department services;
  - (f) School-based services;
  - (g) Personal care services;
  - (h) Physical, occupational, and speech therapy services;
  - (i) Audiology services;
  - (j) Neurodevelopmental services;
  - (k) Waiver services;
  - (l) Nursing facility services;
  - (m) Home health services, more than two visits;
  - (n) Vision services;
  - (o) Hearing services;
  - (p) Dental services, unless prior authorized and directly related to dialysis or cancer treatment;
  - (q) Mental health services;
  - (r) Podiatry services;
  - (s) Substance abuse services; and
  - (t) Smoking cessation services.
- (8) The services listed in subsection (7) of this section are not within the scope of service categories for this program. The exception to rule process is not available.
- (9) Providers must not bill the department for visits or services that do not meet the qualifying criteria described in this section.

#### NEW SECTION

**WAC 388-438-0125 Alien nursing facility program (state-funded).** (1) The state-funded alien nursing facility program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.

(2) To be eligible for the state-funded alien nursing facility program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

- (a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (b), (e), and (f);
- (b) Reside in a nursing facility as defined in WAC 388-97-0001;
- (c) Attain institutional status as described in WAC 388-513-1320;
- (d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;
- (e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366;
- (f) Not have equity interest in a primary residence of more than five hundred thousand dollars as described in WAC 388-513-1350; and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.

(3) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.

(4) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.

(5) An adult who is not eligible for the state-funded alien nursing facility program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

- (a) WAC 388-513-1395 for adults related to SSI; or
- (b) WAC 388-505-0255 for adults related to family institutional medical.

(6) All adults qualifying for the state-funded alien nursing facility program will receive CN scope of medical coverage described in WAC 388-501-0060.

(7) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual, see rules described in WAC 388-513-1380.

(b) For an individual eligible under the family institutional program, see WAC 388-505-0265.

(8) A person is not eligible for state-funded nursing facility care if that person entered the state specifically to obtain medical care.

(9) A person eligible for the state-funded alien nursing facility program is certified for a twelve month period.

**WSR 10-19-111  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed September 21, 2010, 1:19 p.m., effective October 22, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: E2SSB 6504 (chapter 122, Laws of 2010) reduced benefits for eligible victims of crimes under chapter 7.68 RCW. Amending WAC 296-30-900 changes and clarifies the date of eligibility in accordance with E2SSB 6504. The amendment will allow for the sunset date of July 1, 2015, provided in the legislation, to eliminate the need for further rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 296-30-900.

Statutory Authority for Adoption: RCW 7.68.030.

Other Authority: E2SSB 6504, chapter 122, Laws of 2010.

Adopted under notice filed as WSR 10-15-104 on July 20, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 21, 2010.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 99-07-004, filed 3/4/99, effective 4/4/99)

**WAC 296-30-900 What law controls a claim if a statute is amended after the date of the criminal act?** The statute in effect when the criminal act occurred is the controlling law, except as provided in chapter 122, Laws of 2010 (E2SSB 6504). The act occurs when the perpetrator commits the criminal conduct.

For those crime victims who apply for benefits after April 1, 2010, the law in effect at the time the application is received by the department is the controlling law.

### WSR 10-19-118

#### PERMANENT RULES

#### STATE BOARD OF EDUCATION

[Filed September 21, 2010, 2:51 p.m., effective October 22, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending the language of WAC 180-51-066 (1)(b) in order to provide greater flexibility to students. The amendments: (1) Allow a student who has failed all or part of certain courses to enroll in the next course in the sequence while retaking the failed course; (2) explicitly provide the sequence in which courses must be taken. This is intended to clarify that the intent of the rule is not to allow a student to combine algebra/geometry courses and integrated mathematics courses for credit when taken in a sequence that is not progressive; (3) provide for the sequence of mathematics courses that must be taken by a student that is allowed to place out of lower level courses, by satisfactorily establishing competency through a procedure set forth in a written policy of the school district; (4) minor nomenclature changes that more accurately reflect common usage in the field and the words "high school-level" have been inserted in subsection [(1)](b)(ii) to reinforce the expectation that a third credit of mathematics other than algebra 2 or integrated mathematics III will be high school level mathematics.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-066.

Statutory Authority for Adoption: RCW 28A.305.215 (8), 28A.230.090.

Adopted under notice filed as WSR 10-15-124 on July 21, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 16, 2010.

Edith W. Harding  
Executive Director

AMENDATORY SECTION (Amending WSR 09-16-028, filed 7/27/09, effective 8/27/09)

**WAC 180-51-066 Minimum requirements for high school graduation—Students entering the ninth grade on or after July 1, 2009.** (1) The statewide minimum subject areas and credits required for high school graduation, beginning July 1, 2009, for students who enter the ninth grade or begin the equivalent of a four-year high school program, shall total ~~((20))~~ twenty as listed below.

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. Assessment shall include the tenth grade Washington assessment of student learning beginning 2008.

(b) Three **mathematics** credits that align with the high school mathematics standards as developed and revised by the office of superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)(~~(iii)~~~~(iv)~~) ~~through (vii)~~ of this subsection, the three mathematics credits required under this section must include ~~((mathematics courses taken in the following progressive sequence))~~:

(A) Algebra ~~((I, geometry, and algebra II))~~ 1 or integrated mathematics I; ~~((or))~~

(B) ~~((Integrated mathematics I,))~~ Geometry or integrated mathematics II ~~((, and integrated mathematics III))~~; ~~((or))~~ and

(C) ~~((Any combination of three mathematics courses set forth in (b)(i)(A) and (B) of this subsection.))~~ Algebra 2 or integrated mathematics III.

(ii) A student may elect to pursue a third credit of high school-level mathematics, other than algebra ~~((II))~~ 2 or integrated mathematics III if all of the following requirements are met:

(A) ~~((The student has completed, for credit, mathematics courses in:~~

~~(I) Algebra I and geometry; or~~

~~(H) Integrated mathematics I and integrated mathematics II; or~~

~~(III) Any combination of two mathematics courses set forth in (b)(ii)(A)(I) and (II) of this subsection;~~

~~(B))~~ The student's elective choice is based on a career oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

~~((C))~~ (B) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra ((H)) 2 or integrated mathematics III because it will better serve the student's education and career goals;

~~((D))~~ (C) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two and four year college level mathematics courses; and

~~((E))~~ (D) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed((:)), and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(iii) Courses in (b)(i) and (ii) of this subsection may be taken currently in the following combinations:

(A) Algebra 1 or integrated mathematics I may be taken concurrently with geometry or integrated mathematics II.

(B) Geometry or integrated mathematics II may be taken concurrently with algebra 2 or integrated mathematics III or a third credit of mathematics to the extent authorized in (b)(ii) of this subsection.

(iv) Equivalent career and technical education (CTE) mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (b)(i)~~((A) or (B) or (ii)(A)(I) or (H))~~ of this subsection if the CTE mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

~~((iv))~~ (v) A student who prior to ninth grade successfully completed algebra ((F)) 1 or integrated mathematics I((:)), and/or geometry or integrated mathematics II, ~~((or any combination of courses taken in a progressive sequence as provided in (b)(i)(C) of this subsection.))~~ but does not request high school credit for such course(s) as provided in RCW 28A.230.090, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Complete three credits of mathematics as follows:

(I) A student who has successfully completed algebra ((F)) 1 or integrated mathematics I shall:

- Earn the first high school credit in geometry or integrated mathematics II;

- Earn ((a)) the second high school credit in algebra ((H)) 2 or integrated mathematics III; and

- Earn ((a)) the third high school credit in a math course that is consistent with the student's education and career goals.

(II) A student who has successfully completed algebra ((F)) 1 or integrated mathematics I, and geometry or integrated mathematics II, shall:

- Earn the first high school credit in algebra ((H)) 2 or integrated mathematics III; and

- Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student.

(vi) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I pursuant to a written district policy, but does not receive credit under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in geometry or integrated mathematics II;

- Earn the second high school credit in algebra 2 or integrated mathematics III; and

- Earn the third credit in a mathematics course that is consistent with the student's education and career goals.

(vii) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I and geometry or integrated mathematics II pursuant to a written district policy, but does not receive credit for the courses under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in algebra 2 or integrated mathematics III;

- Earn the second and third high school credits in courses that are consistent with the educational and career goals of the student.

(c) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally. Assessment shall include the tenth grade Washington assessment of student learning beginning 2010.

(d) Two and one-half **social studies** credits that at minimum align with the state's essential academic learning requirements in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in social studies at the high school level by 2008-09. In addition, districts shall require students to complete a classroom-based assessment in civics in the eleventh or twelfth grade also by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095). The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States. No other course content may be substituted as an equivalency for this requirement.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state.

(A) For purposes of the Washington state history and government requirement only, the term "secondary student" shall mean a student who is in one of the grades seven through twelve. If a district offers this course in the seventh or eighth grade, it can still count towards the state history and government graduation requirement. However, the course should only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090 (4)).

(B) The study of the United States and Washington state Constitutions shall not be waived, but may be fulfilled through an alternative learning experience approved by the local school principal under written district policy.

(C) Secondary school students who have completed and passed a state history and government course of study in another state may have the Washington state history and government requirement waived by their principal. The study of the United States and Washington state Constitutions required under RCW 28A.230.170 shall not be waived, but may be fulfilled through an alternative learning experience approved by the school principal under a written district policy.

(D) After completion of the tenth grade and prior to commencement of the eleventh grade, eleventh and twelfth grade students who transfer from another state, and who have or will have earned two credits in social studies at graduation, may have the Washington state history requirement waived by their principal if without such a waiver they will not be able to graduate with their class.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(e) Two **health and fitness** credits that at minimum align with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in health and fitness at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095).

(i) The fitness portion of the requirement shall be met by course work in fitness education. The content of fitness courses shall be determined locally under WAC 180-51-025. Suggested fitness course outlines shall be developed by the office of the superintendent of public instruction. Students

may be excused from the physical portion of the fitness requirement under RCW 28A.230.050. Such excused students shall be required to substitute equivalency credits in accordance with policies of boards of directors of districts, including demonstration of the knowledge portion of the fitness requirement.

(ii) "Directed athletics" shall be interpreted to include community-based organized athletics.

(f) One **arts** credit that at minimum is aligned with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in arts at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.-095). The essential content in this subject area may be satisfied in the visual or performing arts.

(g) One credit in **occupational education**. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as proposed or adopted in the career and technical education program standards of the office of the superintendent of public instruction. The assessment of achieved competence in this subject area is determined at the local district level.

(h) Five and one-half electives: Study in a world language other than English or study in a world culture may satisfy any or all of the required electives. The assessment of achieved competence in these subject areas is determined at the local district level.

(i) Each student shall complete a culminating project for graduation. The project shall consist of the student demonstrating both their learning competencies and preparations related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.

(j) Each student shall have a high school and beyond plan for their high school experience, including what they expect to do the year following graduation.

(k) Each student shall attain a certificate of academic achievement or certificate of individual achievement. The tenth grade Washington assessment of student learning and Washington alternate assessment system shall determine attainment.

(2) State board of education approved private schools under RCW 28A.305.130(5) may, but are not required to, align their curriculums with the state learning goals under RCW 28A.150.210 or the essential academic learning requirements under RCW 28A.655.070.